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# BENCH AND BAR

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# BENCH AND BAR

## REMINISCENCES

532

OF

## ONE OF THE LAST OF AN ANCIENT RACE

B1639

BY

14968

## MR. SERJEANT ROBINSON

*IN ONE VOLUME*

yyi-L

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HURST AND BLACKETT, LIMITED,
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# BENCH AND BAR.

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THERE seems to be a curious epidemic spreading through the literature of the present day, which though comparatively harmless, and productive perhaps of considerable interest to the pathologist, is at the same time startling and unprecedented. Its symptoms manifest themselves in a fervid desire on the part of the patient to make the world acquainted with his family history and his individual earthly career, as far as it has yet gone. He is afraid of waiting for it to go further, lest he fare worse; his memoirs might become posthu-

mous, and society and his friends might for an indefinite time lose the benefit to be derived from the contemplation of his virtues, his errors, and his example generally. We have an account of the clever things he said shortly after he was weaned; his doings at school; how many cricket-matches he helped to win, and how many he succeeded in losing; why he afterwards adopted a particular vocation, and why he did not attach himself to another; what became of him subsequently; what clubs he dined at, and whom he met there;—with many other such important details not deemed too numerous to mention.

Most of us have had to encounter these severe trials in the course of our transitory career, without thinking it worth while to divulge them for general information, but, should this malady increase in virulence, it is clear that people in future will know much more of one another than was thought necessary or expedient in times gone by. Now it might be supposed that these revelations of purely personal and domestic history of individuals, guiltless of any exciting adventures by flood or field, might turn out to be rather monotonous,—scarcely, in fact, savoury enough to tempt the public palate,—but they are published and sold, and, what is more, read with avidity. I

confess to having a strange liking for them, and look out anxiously for fresh advertisements of such ventures in the public prints.

In the first place, I admire the courage of a man who believes that a detailed account of his own quiet and unchequered life will find favour with the gentle reader. Then again, we become pleasantly sated with the strongly flavoured pabulum that is so constantly set before us in the shape of melodramatic novels, where events possible and impossible (and where possible to the highest degree improbable) are paraded in the most lurid colours, while the hero poses before the public in all the glamour of an Arabian knight. We must needs crave at times more plain and wholesome food in justice to our overwrought powers of literary digestion; and the compositions I speak of exactly furnish us with what we require; at all events, there is little chance of their setting up any inflammatory action in our system. It is like enjoying the quiet and placid delights of home, after a month's experience of brilliant assemblies or sensational dramas at which, as the French say, we have assisted.

Then too it yields us a pleasing lesson in psychology; we can watch the growth of different minds, where impressions and opinions are jotted down, day by day, in journals or note-books, and

can trace the change of views that occur in the interval between the crude effervescence and impetuosity of youth and the reflective maturity of age.

Then, perhaps, we find a gratification in contemplating the little weaknesses we are sure to discover in these confidences, (especially if the confidant happens to be an intimate friend,) while we fondly congratulate ourselves on having no assailable attributes of our own. Yet, if we could see ourselves as others see us, we might find that we were endowed with eccentricities much more provocative of derision than those we are charmed to detect in others. It is remarkable how small is the value of these foibles in the eyes of the observer, compared with what they would be in the estimation of the possessor, were he but conscious of their existence. We cherish our associates for the solid and substantial qualities they possess; we tolerate their foibles, or merely treat them to a quiet benignant smile. But men in general do not like being even benignantly smiled at. It would humiliate them less to be accused of a crime, than of a weakness which subjected them to the very slightest degree of ridicule.

At all events, I read these productions with considerable zest, but the consequences have become serious. I suppose it is by virtue of the

atmosphere by which I have lately been surrounded, that I found myself gradually becoming inoculated with the same disease. But the diagnosis of my complaint must be taken with a considerable difference; for, while it occurred to me that I might create some little entertainment by detailing my reminiscences of the sayings and doings of others, I never thought for a moment of obtruding my own personality upon the public. In answer to any such suggestion on the part of myself or others, I should have said, with the needy knife-grinder, 'Story! God bless you, I have none to tell, sir.' Society knows very little about me, and I cannot conceive any earthly reason why it should desire to know more. Whilst there is nothing about my history which I care to conceal, there is nothing relating to it which I think interesting enough to relate. My life has been a very uneventful one, and in my seventy-eighth year, I may add, it has been more happy and prosperous than I had any right or reason to expect; this may have arisen from its very privacy, though more perhaps from its devotion to books.

But I have been for more than half-a-century intimately connected with what I hope I may call an interesting profession. In a very circumscribed space we see a great deal of the world; we have perforce to dive into the recesses of men's minds,

and mark their workings in their varied and ever varying forms. Moreover, the Bar differs from most other professions in being essentially congregational. We were (for I must now speak in the past tense) in the habit of meeting one another daily in court. A separate section of the Common Law Bar—always consisting of the same individuals—went twice a year to one of the six circuits which it called its own. Then, when work was over, and, as far as many of the younger members were concerned, long before—for we had none to begin with—we were necessarily dependent upon one another for recreation and amusement. The daily mess afforded considerable scope for such indulgence. The resources of every mind, whether in the shape of the intellectual or the jocose, were freely yielded up for the instruction or delectation of the rest. Our association was thus maintained for years; we were never separated except for about two months annually, during the long vacation.

About the middle of August we used to take an affectionate leave of such of our friends as we cared much about, with tears in our eyes, while there lurked in our hearts a devout hope that we should not catch sight of them again until the middle of October. The sorrow was to a certain extent genuine; the hope originated in the con-

sciousness that, when we did meet again, our holiday would be at an end, and that we should be again compelled to labour at the professional oar for the purpose of propelling the domestic galley to a profitable destination. But, even in vacation, a link of 'betweenity,' as the Americans say, was often established in the shape of a hearty greeting from some of our old companions; for, inasmuch as there was then scarcely any legal business transacted in town during the recess, the members of the Bar were, for the most part, seeking health and relaxation, and, above all, enjoying freedom from routine, in distant resorts, either at home or abroad. Under such circumstances, it was not unlikely that we should stumble upon some of them in regions where we could have had no previous expectation of finding them. I mention these facts to show that there was always a mutual interchange of jest or pleasantry, so that what was known by one in this respect, became the property of all. Thus we had peculiar means of gleaning and storing up in our memories or elsewhere, such quips and quirks as it might be useful hereafter to put into a collective form.

I was tolerably assiduous in my attendance at the courts, and on circuit. I possessed a fairly retentive memory, and, what is more to my present purpose, I have, throughout my life, kept

a journal—written mostly in short-hand—wherein I have noted down such incidents, whether of action or of speech, that I was interested in at the time. But this was never done with the slightest view to publication, nor would the idea probably ever have occurred to my mind except for an example that had recently been set before me. I believe I had almost unconsciously imbibed a notion that lawyers were a too matter-of-fact set of people to excite much public interest, apart from their bare legal efforts in their respective courts; that their jests would be considered too technical and formal to be favourably appreciated; and, that although it was often said of them that they indulged their imaginations a little too freely in dealing with facts before a jury, it was not imputed by way of compliment, but rather the reverse. It is true that in the concrete—as individuals—we have no reason to complain of the consideration generally shown to us; but in the abstract—as a body—we are designated by the most opprobrious epithets. We are called the Devil's Own, the Chargers, the Rifle Brigade.

Whenever a wig and gown, or a gentleman in rusty black, with a white tie and a blue bag, comes upon the stage it is immediately suggestive of foul play somewhere; and most of the crimes introduced into sensational novels are concocted

by a lawyer, until, at the end of the third volume, his villainy is detected, and he finishes his career in a horse-pond or the parish stocks. People are not generally aware that 'Old Nick' has been apportioned to us as our patron saint—as we should say, *per infortunium*, or what may fairly be termed blind oversight.

The legend was that the lawyers in a town in Italy were without any such saintly patron, and they petitioned the Pope that they might be indulged with one, as theirs was the only vocation that lacked so useful an intercessor. Their prayer was granted, and it was arranged that one of the craft should be led blindfold into a certain church, which had statues of saints all round it, and, without knowing whence he started, should walk round and round the interior, and when he stopped the statue nearest to him on which he placed his hand should be the chosen saint of the profession. He finished his course opposite a group in marble, representing the Archangel Michael overcoming Satan, and, unfortunately, laid his open palm upon the body of the latter. Hence our association with the name of his satanic majesty, which, from no fault on our part, clings to us with such unpleasant tenacity.

I make no claim to originality, nor to absolute

novelty for the incidents I am about to recount. Most of them may be well-known to those few of my early cotemporaries who have been favoured with as lengthy a career as mine; but it has recently occurred to me that to the general mass of the public the marked peculiarities of any particular class are as a sealed book, the recondite leaves of which scarcely ever get access to the common air.

That blundering member of the Irish legislature, Sir Boyle Roche, quite oblivious of the characteristic confusion of ideas which the sentence contains, is reported to have said, that 'when a man once gets a *footing* in the *ear* of the community at large, people are always anxious to learn as much as they can about him.' I believe the statement to be true, notwithstanding the unseemly garb in which it is clothed.

It was the same Hibernian M.P. who declined to regard the claims of posterity, since posterity had never done anything for him. The dignitaries and leaders connected with my profession have, to use the language of our Irish friend, 'gained a footing in the public ear.' The fact has little to do with their merits, either mental, moral, or social; it arises simply from the publicity attached to their doings and sayings, augmented, perhaps, by the malicious pleasure

generally felt while contemplating the delinquencies, the quarrels, and the bickerings of our fellow-creatures, and of which our courts of justice are the theatres, and the Bar in general [illegible]he exponents.

Now it is to the Bar and its associations that [illegible]he following pages mainly relate, and, if my [illegible]wn individuality should occasionally intrude [illegible]tself upon the stage, it will be found that I am [illegible]nly playing the part of gentleman usher to those [illegible]who are much more worthy of notice.

## CHAPTER II.

### BECOMING A LAW STUDENT.

Entering as a Student—Inns of Court—Other Inns—Serjeants' Inn—Certificate of Respectability—A very short Examination—The next Step—Two Sureties—Keeping Terms—Eating Dinners—The Temple—Mr. Justice Maule—Temple Church—The Old Hall of the Inner Temple—Middle Temple Library—The new Chambers—Queen Elizabeth and Sir Christopher Hatton—An old Custom—Four men to a Mess—Our Rations—Small Sirloins—After Dinner—A Row on the River—Grand Week—Lords Eldon, Stowell, and Wynford—The Temple Stairs.

Before I enter on the random sketches of character that occupy the following pages, it may not be uninteresting to the general reader to gain an insight into the process by which certain of the liege subjects of Her Majesty acquire the right to disguise themselves in the costume of the wig and gown. I entered, as a student at the Middle Temple, in April, 1833, A.D. There are four distinct establishments that have the exclusive privilege of granting the degree. A candidate must attach himself to one of them.

[redacted]gh it is quite immaterial by which of the [redacted]ur portals he seeks to enter the profession. [redacted]hese Inns of Court, as they are called, are [redacted]incoln's Inn, the Inner Temple, the Middle [redacted]emple, and Gray's Inn. There are several other [redacted]stablishments called Inns, such as Clement's Inn, [redacted]taple Inn, Clifford's Inn, New Inn, Barnard's [redacted]nn, etc., but they are not Inns of Court, and [redacted]ave nothing to do with the Bar, except that [redacted]some of them are dependencies of the four superior [redacted]ones, whilst others, originally in the same pre-[redacted]dicament, have now a totally separate existence.

They form for the most part communities [redacted]f attorneys, and have accumulated considerable [redacted]wealth. In these confiscatory times, some of them [redacted]ave thought it expedient to subject themselves [redacted]to deliberate suicide, lest a worse fate might befall [redacted]them. Like the French Huguenots of old, they [redacted]ave thought it better to break up their ancient [redacted]ouses and homes and disperse, each with his [redacted]hare of what was for centuries recognised as a [redacted]oint title and assured possession, rather than live [redacted]n constant fear of an arbitrary statute that might doom them to forfeiture and annihilation.

I have not mentioned Serjeants' Inn, which was of a totally different character to any other, and which I shall have occasion hereafter to refer to. Anyone wishing to become a student at an Inn

of Court had* to furnish himself with a certi[ficate] of respectability signed by two barristers, wh[o] vouched for his eligibility in that respect. H[e] had then to go through the formality of what wa[s] technically called an examination, the crucia[l] part of which occupied about a minute and a half. One or two questions in Latin or in genera[l] literature were put to him in the perfunctory styl[e] in which one asks a passing acquaintance afte[r] his health, being quite indifferent as to what answer he might give. The pursuit of knowledge by the examiner as to a youth's proficiency was not very ardent in those days, and the most superficial candidate for the honours of admission might have come off with great credit to himself.

I believe the examination now is just a trifle nearer the real thing, but I never yet heard of any man being plucked in this preliminary 'little go.' If I had, I should expect the next intelligence I got of him would date from an idiot asylum.

The next important step was the payment of one hundred pounds into the treasury of your selected Inn, while you entered into a stringent bond with two sureties that you would obey the rules and regulations of the establishment, attend

* I speak in the past tense, although I believe the mode of proceeding is much the same now as it was formerly.

church (in my case the Temple) every Sunday with strict regularity, and pay up your commons and other dues whenever they were demanded. As to the third of these stipulations, the sureties were mere substitutions—if you did not pay your debts, they would pay for you; but it was never understood that they could observe the rules of the Inn for you, or even that they could go to church for you when you were profligate enough to stay away.

These preliminaries satisfactorily got through, no future penance was required to qualify you for a call to the Bar except a certain display of assiduity in eating and drinking, and it was prescribed in this wise. It was necessary that you should keep twelve terms, and, as there were four terms in the year, this stage lasted three years.

A term was of three or four weeks' duration, and in the middle of each there was what was called a grand week, and the remainder was divided into periods called half-weeks.

Now, keeping a term meant that you had dined in the hall at least once in grand week, and also once in each of two half-weeks. To partake of three dinners was *de rigueur*, but they need not be in consecutive terms. You might take your time about them, spread them over ten years if you liked, but to render yourself eligible for a

call you must have completed your tally of twelve. Keeping a term then was not so harrowing a curriculum as many are found to be in these educational times.

The Temple, when I first became a student, had a very dull, dingy appearance compared with what it has now. Society owes, I think, a deep debt of gratitude to Mr. Justice Maule, when at the Bar, for accidentally burning down a large portion of its old ricketty tenements, and thus affording scope for the great improvements that have taken place since. It is said that, returning to his chambers late at night or in the early morning, he in a fit of abstraction put the light candle under his bed instead of on the dressing table, and I believe he never divulged what was the subject that engrossed him so deeply on that occasion. It is enough to say that it cleared off many encumbrances and eye-sores, and opened up a field where symmetry and taste have found full opportunity for exercise.

There used to be a range of low, ugly buildings, used as record, writ or other such offices running across the fine square of the Inner Temple where the railings of the garden stand now; these were destroyed, and luckily nothing substituted in their place. Since then, Paper Buildings and Harcourt Buildings, forming the

east and west sides of the gardens, have been erected, and, if Crown Office Row on the north side were but completed, it would form a very handsome adjunct to the other two. As it is, half is new and in keeping with the recent structures, while the other half has a crazy, tumble-down look which makes you regret that the efforts of the deceased judge had not included this part of the Temple in his unintentional programme. As you look upon it, you are reminded of the advertisements of the vendors of patent hair-restorers, where half of a man's head is entirely bald, and the other bristling with capillary attractions that are meant to be irresistible.

The Temple Church, too, has in my time gone through a wonderful transformation. When I first knew it, after I had become one of its enforced satellites, it had a very commonplace, modern-like appearance. The beautiful clustered columns that support the roof were then imprisoned in an outer case of concrete, forming flaunted gouty-looking pillars of two or three feet in diameter. They were thus incrusted at the time of the Revolution, by way of protecting them from the ravages of the Roundheads who affected the belief that to cast an admiring eye on beauty, whether animate or inanimate, was a wicked and deadly sin. The roof was plain and bare, not a

vestige of painted glass, no ornament of any kind was to be discovered, and the general view of the interior gave one the idea of a shabby conventicle. To have seen it emerge from the mean insignificant aspect it presented fifty years ago, into the elegance and beauty of its ornamentation now is a reminiscence well worth cherishing.

The old hall of the Inner Temple has been transformed into the handsome structure that now replaces it, and which was formally opened by the Princess Louise in 1870.

I may mention as an addition to the Temple Buildings (as distinguished from a restoration) the Middle Temple library—not very imposing as regards its exterior, but very comfortable and commodious internally.

Many substantial, comely blocks of chambers stand on the site of what I remember as worn-out dilapidated ones, and although the change may be very distasteful to antiquaries, who are given to grubbing into venerable holes and corners which they mentally fondle and worship as landmarks of the past, the occupants of chambers have every reason to rejoice over the welcome innovation.

But there is one rich and noble edifice that has continued to lift its head on high, in calm and

stately indifference to all the architectural vicissitudes that have occurred around it, and that is the Middle Temple Hall. It is now the same as it was when it left the hands of the builders, and one of the most beautiful structures in the gdom. Queen Elizabeth is said to have danced cotillon with Sir Christopher Hatton at its ening, and also that she witnessed the performnce of Shakespeare's 'Twelfth Night' within its alls. It was here that the aspirant for legal nours had to perform the penance I have rered to, by eating his way up to the hoped-for oolsack.

The dinners took place every day in term time, ndays included. Each day at five o'clock the nchers in their gowns walked in procession up e hall and took their seats on the dais, where eir dinners were served. One long row of les, each accommodating twelve persons, ran wn the sides of the hall. The Bar were seated the upper end according to seniority, and low them sat the students.

I may mention here that by an old custom, still kept up at the Middle Temple, a porter goes round the different courts and avenues, half-an-hour *before dinner, blowing a bullock's horn to remind all whom it may concern* that dinner-time is at

hand. This custom is alluded to in the 'Persian Spy,' or the 'English Spy,' I forget which, in these words:

'As loud as the Temple horn, that calls cuckold makers to their commons.'

The students in the olden time were gay you fellows who used to play sad havoc with the hea of the wives and daughters of the citizens, as ma be seen in the licentious comedies of Congrev Wycherley and other playwrights of the seve teenth and eighteenth centuries, and to th satirical productions is due the strenuous oppo tion the citizens always exhibited towards pla and stage-players whenever they had the opp tunity of showing it.

The Bar and the students were parcelled into messes of four men each, everyone bei treated to the same bill of fare. *Menus* wer therefore, quite unnecessary, even had they b in ordinary use. We had a bottle of wine ( variably port) to each mess, soup, a sirloin beef, a fruit tart, cheese and bread, with an u limited supply of small beer, certainly the bes of the three classes of that beverage, which are described as strong table, weak table, and lamen-table.

The sirloins, I remember, used to excite our wonder and admiration. They were very delicate

and singularly small; in fact, quite Lilliputian. I never saw any joint of the kind so diminutive,—efore or since. We marvelled where they came om, and were almost imbued with the notion at they were manufactured expressly to suit e dimensions of four hungry men's appetites.

There was always enough, however, but never uch to spare. We had no reason to complain the diet provided for us, and, if I recollect htly, the charge was about two shillings and htpence.

After dinner, which lasted about an hour, the enchers marched out as they had marched in, d retired to what was called the parliament hamber, to finish their repast with wine and essert, whilst we were left to our own devices. n summer time we used often to take a boat at Temple Stairs, and pull up to Battersea, or wn to Limehouse, the latter a feat which, owing the crowded state of the river, would not be free from danger now.

In the middle of Grand Week there was a grand day, when the Bench was graced by the presence of the old dignitaries and retired and existing judges who had once belonged to us. I have on several occasions seen Lord Eldon and Lord Stowell, his brother, walk up the hall to take their seats at the Bench table, whilst Lord

Wynford, whose limbs were paralysed, was carried in on a chair. It told us how old association predominated over bodily infirmity.

There was a custom of which some of us use to avail ourselves on a Friday in term time. barrel of oysters was placed on a table in t middle of the hall, half-an-hour before dinner, a those who chose to run the risk of opening the for themselves, could stimulate their appeti for the future meal, *ad libitum*. The opportun arose from a bequest made by some old lady ancient times, probably for the good of our sou and perhaps with some little consideration for h own; but we never troubled ourselves muc about the origin of the refection. I daresay i had some reference to the duty of carnal absti nence on fast days. But, if so, there must have been some little misconception about it, fo single barrel, so far from satisfying our inw cravings, only had the effect of sharpening them

The Temple Stairs already mentioned have long ceased to exist; their site is buried deep in the stony bosom of the Embankment. Coeval with them was a low wall running the whole length of the gardens, and which separated them from the river. It almost seems as if I were referring to ancient history when I think how often we used to watch the elegant, gilded barges gliding up and

wn the Thames, freighted with the members of e guilds and their friends, on a mission of minal business or actual pleasure. They were spectively rowed by a number of scarlet-coated atermen, each wearing on his arm a large silver dge, bearing on it the arms of the particular ompany to which he professed allegiance. The olluted and crowded state of the river put an nd to this picturesque display of comparatively d-world pageantry.

# CHAPTER III.

## WITH A SPECIAL PLEADER.

Looking out for a Pedagogue—The Special Pleader—His Fees—
Long Chancery Suit—My friend Nichols—A Judge of the In
solvent Court—No Retiring Pension—Registrar in Bankrupt
—A County Court Judge—A Bachelor to the End
Westbury.

HAVING achieved a right to studentship, [redacted]
thing to do was to look out for a ped
under whose tuition I might become initiat
the science and subtle mysteries of the
which I was then as profoundly ignorant
Ojibbeway Indian. This was usually accompl
by paying one hundred guineas a year, f
many years as were considered expedient or
venient, to a barrister or special pleader for
privilege of what was called having the ru
his chambers. But for the benefit of the gen
reader it is right that I should explain wha
special pleader means, because it is a designat
somewhat anomalous. As is the case simila
with the Speaker of the House of Commons, w
is not allowed to speak in debate, a special pleade

is a lawyer who is not allowed to plead in open court. Pleading, in its technical and legal sense, means preparing a formal statement of the case in its various stages. The plaintiff states his claim in due form, the defendant pleads in answer, the plaintiff replies, and the defendant rejoins. All these various documents had formerly to be drawn with the greatest nicety and precision, and the slightest deviation from precedent might involve entire failure in the suit. On the special pleader was thrown the responsibility of this initiative work before the cause came on for trial. He was a man supposed to be thoroughly versed in all the minutiæ of practice, and his chambers formed an admirable school for beginners to become acquainted with their future duties.

But although a special pleader was not called to the Bar, and was therefore not a barrister, he might become one, generally speaking, whenever he pleased, since he was quite qualified for that ceremony; he had joined the Inn, gone through the stringent examination I have mentioned, and eaten as many dinners as the statutes of the Inn prescribed for the Bar; he had only stopped short of being called. Why, then, at the last moment did he shirk the toga? Possibly he preferred the quietude of chambers to the turmoil of the courts; perhaps he modestly

assumed that his endowments did not include the gift of advocacy. But there was a more important distinction still between him and a full-fledged barrister. He could accept a fee of half-a-guinea, or even seven shillings and sixpence, while the minimum fee of a barrister was in general one guinea.

Many timid attorneys, not choosing to assume an unnecessary responsibility, were in the habit of sending every case, however trifling, to a special pleader for his opinion and manipulation; and the number of such fees amply compensated for the pettiness of each individual amount. Many pleaders made very large incomes, and many of our eminent judges commenced their professional career in such character.*

I have used the word 'pedagogue,' but in a very different sense to its ordinary one; for it was no part of his duty to attend either to our minds or our morals. He was always willing, at his leisure moments, to explain any matter of difficulty we might stumble upon, but, if we never troubled him, we might be quite sure he would never trouble us. One saw the cases that came in for his opinion or his drafting, and might

* Such, however, has been the change from stringency to license in pleading that, while in 1840 there were seventy-eight special pleaders, there are now only three.

study and digest the answers before they went out; but this was all the benefit that one was likely to get, unless, like Oliver Twist, one asked for more; for a pleader or barrister in large practice—and it was useless betaking oneself to a teacher, with a small one—had no time to devote to a systematic course of tuition. If a novice was bent on undergoing a three-years' pupilage, the best way of disposing of himself was to apportion his time among three different preceptors instead of one, so that he might gain experience in various kinds of practice.

Neither I nor those who ruled my destiny—all, I am proud to say, females—had the slightest idea of ordinary strategy in such matters, and, by virtue of a strong recommendation to a barrister named Nichols, I unified the three years, and paid him at once three hundred guineas for that term of tuition. Looking at it in an *à priori* fashion, it was, no doubt, a foolish course to take, especially as he only practised in the Insolvent Court, an exceptional region, that could give one but a very infinitesimal and contracted view of the general administration of the Law. But he was a gentleman of very considerable erudition, both legal and general, and was always disposed to drive forensic knowledge into me, whenever I was inclined to absorb it. He was a tall, hand-

some man, simple and retiring in his habits, and refined in his manners; and I am sure none of his surviving associates will fail to recognize the fidelity of this portrait.

I never repented having selected him as my Mentor, for it led to the establishment of a firm friendship that lasted till his death, and, in truth, long beyond it, as far as my connection with his affairs was concerned; for he had made me promise to be his executor, and, in spite of the attempts of his relatives to induce me to relinquish the trust, I adhered, of course, to my promise. In the end, these relatives quarrelled amongst themselves, and the inevitable result was a Chancery suit, which lasted eight or ten years. I placed the affair in the hands of my deceased friend's ordinary solicitors, and, being merely a nominal defendant, heard very little about the matter, till one day I was told it was settled. I fancy, however, considering the sort of dissipated and dissipating life a protracted suit leads in Chancery, there could not have been much left to settle—except the costs; and with these I had nothing to do.

My friend Nichols had been appointed Judge of the Insolvent Court, but upon the understanding that, if that court should be abolished—which had for some time been in contemplation—he was to expect no retiring pension; and these

terms he accepted. He then became Registrar in Bankruptcy at Manchester, and some time after was appointed to the County Court judgeship at Birmingham; and this he held at his death. He was never married, and used to say he was born a bachelor, and in that persuasion he intended to remain.

Much as I esteemed and respected him, I should not have mentioned his name merely as connected with my own personality; but I have a particular object in referring to him with regard to the successive offices he held, as will subsequently appear in my remarks on Lord Westbury.

## CHAPTER IV.

### CALLED TO THE BAR.

Called to the Bar—Rejection of Mr. Daniel Whittle Harvey, the City Solicitor—The ceremony of being Called—Taking Oaths—I become a Barrister-at-Law—Choosing a Circuit—Expenses of Going on Circuit—Anecdote—The Home Circuit—Deference to Authority formerly—Notoriety and Distinction—Etiquette of the Bar—Walking to Circuit Towns—Rule as to Lodgings—Selecting a Sessions.

In Easter Term, 1840, I was called to the Bar. As a preparative for investiture, the aspirant, who has sufficiently dined, must get himself proposed by one Bencher and seconded by another in the parliament chamber, where the official business of the Inn is conducted, and, if his character is unimpeached, the fiat for his call goes forth. But no one could claim to be called as a matter of right. The Benchers might reject the candidate's application, if they pleased, but always subject to an appeal to the body of judges as visitors of the Inn; and their decision was final.

I remember Mr. Daniel Whittle Harvey waging

a fierce warfare with his Inn, and with the judges, who resolutely refused to admit him to the ranks of the Bar, although he had kept his terms, and their decision remained unimpugned. He had been an attorney, was for some time member for Colchester, and became city solicitor. In that last capacity, or some other, he had much to do with issuing the metal badges which cabmen, under the then recent act, were compelled to wear. A question was sometimes asked, 'Why a cab-driver need never be without food?' and the answer was, 'Because he always had his plate of Whittle's before him.'

The city solicitor was a very shrewd, clever, stirring man, a capital after-dinner speaker, and a first-rate whist-player; he was not unpopular, but perhaps more liked than respected. At Colchester he was much censured, by those of the constituency who were religiously disposed, for canvassing the electors on a Sunday. He excused himself on the ground that he was strictly following the scripture precept, which enjoined him 'to make his election sure.'

[redacted] have been since Daniel Whittle Harvey's [redacted] or three rejections of claims to be called [redacted]ar—one occurred but a short time ago—[redacted] exercise of such a power is not likely to [redacted]sorted to, except in extreme cases.

The actual ceremony of being called was very short and simple. On the appointed day, while the Benchers and Bar were in the hall prepared to sit down to dinner, I, happening to be the senior of nineteen infatuated beings, habited for the first time in the full panoply of gown, wig and bands, and each brimful of hope and speedy distinction, walked up the hall, and stood in a row, before our venerable superiors. We then took a short oath that we would do our duty to the Inn, to the public, and to our clients,—should we ever have any,—and the formal business was at an end.

We sat down to our repast as usual, and, as soon as the Benchers had retired from the Bench table, private friends were allowed to flock in and partake of wine and dessert at the table assigned to their particular host, and the revels were generally kept up to a late hour.

Next day, with light hearts, but many of us with aching heads, after the severe trials of the night before, we had to take divers oaths before a judge in the Bail Court, containing allusions not very complimentary to the Pope, or the P[redacted] whoever that might be.

After this swearing, which was, I r[emember] interspersed with a fair sprinkling of cu[rses] was entitled to call myself barrister-at-law[redacted]

the titular distinction was of very little use to me for a long time to come.

My friend Nichols offered me a room in his chambers at a very moderate rent, and a small share in his clerk was included in the bargain. But for two or three years neither one nor the other proved of much use to me.

Then it was necessary to choose a circuit, some of which were very expensive, especially the northern and the western, from the distance of the assize town from London, as well as from one another. There was an imperative rule, before railways were generally established, that no member of the Bar could enter a circuit town by any public conveyance, and men used to club together and divide the expense of a post-chaise amongst them. A man who had gone the northern for some time, without any profitable result, was told by a friend how he could increase his available income by two hundred pounds a-year, and still remain a member of the circuit. On inquiring what was to be done, the answer was, 'Stay on it.'

I chose the home circuit as being the most agreeable and the least costly. It comprised the counties of Hertford, Essex, Kent, Sussex, and Surrey, which were visited twice a year, in the spring and in the summer. It was with great

difficulty, and after much debate, that the rule against travelling by ordinary conveyance was relaxed, and permission given to journey by rail. But the change was inevitable, and the decree went forth.

I may say that, in those days, deference to authority was much more strictly and generally manifested than it is now, when every man presumes to be a law to himself, and thinks he is not bound to obey an ordinance of the legislature, until he has satisfied his own mind that it is both reasonable and expedient. The privilege of everyone doing as he liked was not then considered an equivalent for social ostracism, and gaining notoriety was not looked upon as the same thing as obtaining distinction. The unwritten law and etiquette of the Bar were cheerfully obeyed, and the tribunal of the Bar-mess was treated as supreme.

No doubt the rule as originally fi[illegible]ed was a salutary one. Attorneys and solicito[illegible] would necessarily travel by ordinary conveya[illegible] it was intended to prevent the Bar from currying favour with the former, or hear the latter a discussion about cases in w[illegible] listeners might be afterwards engaged. [illegible] the same risks would be run in journe[illegible] rail, but the regularity and certainty of th[illegible] of transit were too overpowering to be resi[illegible]

My circuit experience just began at the period of the alteration in question; although very few railways had then been completed, and none that were altogether available to the members of the Home. It was only on one occasion that I shared in a post-chaise, and that was on part of the way to Hertford, to which there was no railway opened for a long time afterwards.

Many have been the times when, after going by one of the 'Diamond' or 'Star' steamboats to Gravesend, I have walked on to Maidstone with a troop of companions, some of whom in after-life would not care perhaps to be reminded of their then impecuniosity; for we walked, of course, in order to save expense and not transgress the settled rule. When the rail was only open as far as Woking, we used to have a merry walk to Guildford,—from Broxbourne to Hertford, and from Hyde Park Corner to Kingston.

The principle of the rule which prescribed exclusive travelling extended to lodgings at circuit towns, and we were precluded from taking up our quarters at any hotel. We must needs betake ourselves elsewhere, and most of the tradesmen in the locality—or rather their wives, for we understood that what we paid was treated universally as appropriated to their separate use—offered us the accommodation we required.

But this regulation has been for some time abrogated, owing probably to the vast increase in the Bar population, and, although the old stagers for convenience keep on their private rooms, it is not considered a breach of etiquette to put up at the Bar Hotel. Many of us kept on our lodgings from year to year, notwithstanding our absence from particular assizes. At Guildford, Chelmsford, and Maidstone I had the same rooms for upwards of thirty years.

After selecting a circuit, the next thing was to choose a session, and the choice lay among the counties comprised in the former. I was guided by the same economic motive that led me in the other selection, and chose Surrey, the principal sittings being held at Horsemonger Lane, Newington, although three times a year they took place respectively at Reigate, Guildford, and Kingston. They were charming little expeditions. On these occasions, we were always allowed to put up at the 'Bar Inn,' the average duration of the sessions extending to about three days.

## CHAPTER V.

### THE OLD BAILEY.

The Central Criminal Court—Barristers and Attorneys of the Period—Samuel Warren's 'Ten Thousand a Year'—Alderman Harmer—The *Weekly Dispatch*—The Morals of the Public and the Press—Black Sheep among Lawyers—Baron Huddleston acts as Interpreter—The Oxford Circuit—Serjeant Ballantine's Reminiscences—Serjeant Arabin—A Discreditable state of Things—The Clerks of the Court—The drinking Habits of the Time—The Recorder—Alderman Wire—The Common Serjeant—Charles Phillips—Lord Brougham—Serjeant Byles.

THAT I might give myself every chance of going through an ordeal which I heartily longed for, but as heartily dreaded, namely, the opportunity of listening to the sound of my own voice in open court, I betook myself to the Central Criminal Court; but, moderate as were my hopes, it was long before they or my fears met with the slightest realization.

The Old Bailey, then and since known by the more euphonious name of the Central Criminal Court, was a very close borough on my first making its acquaintance. The principal business was in the hands of Messrs. Phillips, Clarkson,

and Bodkin, while Ballantine (called in 1834) was fast creeping up to them. There were, too, Adolphus and Curwood, two ancient veterans who had been roughly cast aside by their more dashing juniors. The most successful of the attorneys were Mr. Humphreys (now Humphreys and Son) and Mr. Lewis (now Lewis and Lewis), and they were much respected and esteemed. Messrs. Harmer, Flower, and Steele had a certain footing, but it was not, I think, a very firm one. They were said to be the original of Quirk, Gammon, and Snap, in Warren's 'Ten Thousand a Year.' The head of the firm was an alderman of London, who had made a large fortune by means of his profession and otherwise, but the 'otherwise' caused him considerable mortification. He was proprietor of the *Weekly Dispatch*, then a very scurrilous paper, often classed with the *Town*, the *Figaro*, the *Satirist*, and other such educators of the people; and the owners of them, it was generally said, were in the habit of levying contributions on peccant persons of high rank by threatening to publish their private indiscretions; while they pandered to vicious tastes by circulating their fashionable scandal. I am not aware that the *Weekly Dispatch* was ever charged with the above species of extortion, but it was ultra-radical in its views and very abusive of its opponents.

These papers had been for some time what were called most valuable properties, and produced large incomes to those who were flagitious enough to profit by them. But the advent of Queen Victoria to the throne and her alliance with Prince Albert soon produced a wonderful change in the morals of the press, consequent on the change of those of the public.

The habitual morality of a court affects society from its highest to its very lowest grades. Its tastes and habits become much purer; vice and profligacy no longer walk abroad to receive the [redacted]ment and approval of the masses. The [redacted] journals I have mentioned began to [redacted]or want of readers, while their owners [redacted]t society was gradually looking under [redacted]s at them, in spite of the wealth by [redacted]y were surrounded.

[redacted]nber many years afterwards wondering, [redacted]cted on the improved state of moral feel-[redacted], how it was possible that such papers as [redacted]lluded to could ever have been tolerated [redacted]le laying the slightest claim to civilization. [redacted]n bound to say that respectable well-con-[redacted] persons, even, while admitting them to be [redacted]eated them as necessary ones, which it was [redacted] to protest against. Shortly afterwards a [redacted]as offered to the world, of how great and

salutary was the change that had been wrought in the sentiments and feelings of the English people. A dozen or more years ago it will be remembered that a publication called the 'Queen's Messenger,' of a very scandalous character, was sent forth as an experiment to see what success might attend a renewal of the modern scourge of which society had been the victim. The public put its foot down upon the insidious attempt and stamped it out at once. The schemer who devised the plan was obliged to fly the country to avoid a criminal prosecution, and the nuisance was, tem- rarily at least, abated. I trust the pre country will not relapse into the coars lubricity that characterised a portion of century ago; but, while the leading and journals maintain the same high tone of which have always distinguished the there are signs in the atmosphere tending that elsewhere the wind is veering in an direction.

But to return to Alderman Harmer. In of time, he came next in rotation to se office of Lord Mayor. There was nothing him as far as I could ever learn, except t of his being the proprietor of the *Weekly D* but that seems to have been amply sufficie he was rejected without ceremony. He b

handsome residence called Ingress Abbey on the banks of the Thames near Greenhithe. It was said to have been erected entirely from the stones of old London Bridge.

Among the other solicitors I ought to mention two others against whom I never heard a word of censure from anyone—I mean Mr. Hobler, the City Solicitor, and Mr. Wontner. I believe them to have been beyond reproach. It must be admitted that there were one or two practitioners of both grades in the profession of which the same estimate could not be formed; but they were well known, and their society was duly shunned. Yet they gave scope in the mouths of the censorious for casting a slur on Old Bailey practice generally. I can only say that while I was there, and with the trifling exceptions I have named, the business was conducted as fairly and respectably as in any of the courts of Westminster Hall. I may say further that I have heard much more slang talked of the Old Bailey than ever I heard uttered within its walls.

I found among the Bar the present Baron [redacted]on, then a young man, who had lately [redacted]se sessions, and was my senior by about [redacted]nths. He will excuse my relating that [redacted] distinguished himself on one occasion, [redacted]fter his first appearance there, by acting

as interpreter for the court in the absence of the regular official. He was an excellent French scholar, and acted his part so well that he was highly complimented by the Bench, and the press teemed with praises of the readiness and intelligence he displayed. But, after making fair progress, he gradually ceased to appear. A due attendance upon circuit was incompatible with a thorough adherence to the Old Bailey, and the Oxford circuit, of which he subsequently became the leader, at last weaned him away from his original scene of action.

Serjeant Ballantine, in his reminiscences, has much to say about the Central Criminal Court, and I shall not be thought, I hope, to trespass upon his preserves if I supplement what he has detailed about men and things connected with that locality by what has occurred under my own observation, or is tolerably authenticated by being long treated by us all as matter of common knowledge. He has described how, when the courts were sitting, the superior judges who had been trying and transporting and imprisoning all day retired about half-past five upstairs, to dinners, while the civic judges came down eaten theirs, and took their places on t Their dinner-hour was three o'clock, a appearance in general pretty clearly

that they had done more than justice to the fare provided for them by the worthy sheriffs.

Serjeant Arabin, besides being Judge of the Sheriff's Court, was a Commissioner of the Central Criminal Court. He was a thin, old, wizen-faced man, very eccentric in his ideas and expressions, and more so in his logic. One of the members of the Bar made a collection of his sayings, and called it 'Arabiniana,' and a few copies were printed for private circulation. I never possessed a copy, but I remember one or two of its pithy aphorisms. In sentencing a prisoner who had been convicted of stealing property from his employer, he thus addressed him: 'Prisoner at the Bar, if ever there was a clearer case than this of a man robbing his master, this case is that case.' Again he had to pass judgment on a middle-aged man, who had been tried and convicted upon two or three indictments and had then pleaded guilty to more. Arabin said, 'Prisoner at the Bar, you have been found guilty on several indictments, and it is in my power to subject you to transportation for a period very considerably beyond the term of your natural life; but the court, in its mercy, will not go as far as it lawfully might go, and the sentence is that you be transported for two periods of seven years each.'

A queer scene occurred at one of the evening sittings, which may be worth recording. Serjeant Arabin had come down from the dining-room, with the alderman on the rota, and they took their seats upon the Bench, the countenances of both bearing testimony that their afternoon's carouse had not been a light one. The prisoner first upon the list was in the dock, and the prosecutor was in the witness-box, so that all was ready for the trial. There was no counsel in the case, and, that being so, the judge always examined the witnesses from the written depositions which were taken by the magistrate and returned to the court by him. Now Arabin was very short-sighted, and also very deaf. On this occasion he unluckily took up a set of depositions which had no reference to the prisoner at the Bar; the charge against him being that of stealing a pocket-handkerchief, while the judge's attention was fixed upon a charge of stealing a watch. Holding the abortive writing close to the light, and peering at it through his spectacles, he began his examination.

*Judge.* 'Well, witness, your name is John Tomkins.'

*Witness.* 'My lord, my name is Job Taylor.'

*Judge.* 'Ah! I see you are a sailor, and you live in the New Cut.'

*Witness.* 'No, my lord, I live at Wapping.'

*Judge.* 'Never mind your being out shopping. Had you your watch in your pocket on the 10th of November?'

*Witness.* 'I never had but one ticker, my lord, and that has been at the pawn-shop for the last six months.'

*Judge.* 'Who asked you how long you had had the watch? Why can't you say yes or no! Well, did you see the prisoner at the Bar.'

'Yes, of course I did,' said the witness, in a loud tone of voice, for he began to be a little confused by the questions put to him.

*Judge.* 'That's right, my man, speak up and answer shortly. Did the prisoner take your watch?'

*Witness.* (In a still louder tone.) 'I don't know what you're driving at; how could he get it without the ticket, and that I had left with the missus?'

Arabin, who heard distinctly the whole of the last answer, threw himself back in his chair, adjusted his glasses, and glared at the witness-box with a look of disgust. At last he threw down the depositions to an elderly counsel, who was seated at the barrister's table, and said,

[redacted]yland, I wish you would take this witness and see whether you can make anything for I can't.'

Now Ryland had been dining at the three o'clock dinner too, and he was never behind-hand in doing honour to the civic hospitality. He stood up, stared ferociously (for he had a countenance that could do it to perfection) at the unlucky witness, and, turning round and looking up at the Bench, observed,

'My lord, it is my profound belief that this man is drunk.'

'It's a remarkable coincidence, Mr. Ryland,' said the judge, 'that is precisely the idea that has been in my mind for the last ten minutes. It is disgraceful that witnesses should come into a sacred court of justice like this, in such a state of intoxication.' Then, leaning over his desk to the deputy-clerk of arraigns, who was seated below him, he said, 'Mr. Mosely, don't allow this witness one farthing of expenses. I'll put a stop to this scandal if I can.'

I need hardly say that the source of the mistake was discovered, and the witness got his expenses in the end.

To men in these days it seems almost impossible that such a discreditable state of things as that which I have just narrated should ever have existed in an English court of justice; but Ballantine nor myself have at all exagger[illegible] unseemly condition which the subordina[illegible]

pants of the Bench presented on very many occasions; not that, after all, any serious injustice was likely to be done. The clerks of the court were steady, responsible men, well versed in criminal law and practice, and who were, in fact, of great assistance to the judges of all ranks, who were constantly in the habit of consulting them when any difficult or intricate point arose for solution. They would not hesitate to interfere by quiet suggestions, for the purpose of correcting what was going wrong; and there were always people in court, sober and honest enough to have exposed any flagrant abuse of power; but, at all events, it was a grievous scandal, that the courts presented the appearance they so frequently did, and at last the authorities interfered. The late sittings were abolished; a third court was added to the other two, and the City judges did soberly and demurely by day what they had been in the habit of doing so questionably by night. But, bad as these things may appear to us now, we [illegible]ember that the habits of the times should [illegible] share of the blame.

[illegible]e of licentiousness had not yet turned, [illegible]n its course along a purer channel. Ex[illegible]rinking was not scowled upon as it is [illegible] days. What was mildly called 'having [illegible]oo much' was certainly regarded as a

folly and a weakness on the part of the imbiber, but it was not yet considered an ungentlemanly thing. But I have no desire to moralize; I only wish to explain—perhaps slightly to palliate—a condition of things which happily for the present generation has long ceased to exist.

It is further recorded of Arabin that, in sentencing a man to a comparatively light punishment, he used these words:

'Prisoner at the Bar, there are mitigating circumstances in this case that induce me to take a lenient view of it; and I will therefore give you a chance of redeeming a character that you have irretrievably lost.'

Again, he once said to a witness: 'My good man, don't go gabbling on so. Hold your tongue, and answer the question that is put to you.'

Arabin prided himself very much on possessing the faculty of recognizing [illegible] he had once seen, and the result was that [illegible] often claimed acquaintanceship with th[illegible] and thieves that were brought before [illegible] who had been found guilty of some pett[illegible] came up for sentence.

'This is not the first time,' said the [illegible] have seen your face, young gentleman, [illegible] you have seen mine. You know very well [illegible] met before.'

'No,' said the boy, who began to whimper; 'it's the first time I was ever here, your worship. I hope you'll have mercy, my lord.'

'Don't tell me that,' said Arabin. 'I can't be deceived. Your face is very familiar to me. Gaoler, do you know anything of this youngster?'

The gaoler answered: 'Oh! yes, my lord; he's a very bad boy, a constant associate of thieves. He's been very badly brought up, my lord. His mother keeps a disreputable house in Whitechapel.'

'Ah,' said Arabin, 'I knew I was right. I was quite sure your face was well known to me.'

Out of the Recorder, the Hon. Charles Ewan Law, son of the first Lord Ellenborough, and father of the present lord, very little fun was to be got. He neither amused us by any flashes of wit or humour, nor exhibited any peculiar eccentricities that might furnish us with food for ridicule. He was a solemn, steady, sententious person, too respectable to wish to be made the object of remark, whether with reference to praise or blame. He had been sometimes detected in the perpetration of a pun, but the following is the only good one I ever heard from his lips:—

Before Alderman Wire was elected to the Sermanic bench, he used often to play the part of under-sheriff. He was a mere epitome of manhood; certainly the smallest individual

of any note I ever met with, except perhaps Tom Moore, the poet; but his cleverness, intelligence, and, I may add, his opinion of himself, were in an inverse ratio to his altitude. The under-sheriffs had the management and arrangement of the court in their hands during the sessions, and always appeared in full court suits, with swords by their sides. As to Wire, the costume, together with his demeanour generally, could scarcely fail to call forth a smile from those who saw him under such circumstances for the first time. Somehow or another, the Recorder and he could never get on satisfactorily together. One day in court the former spoke rather sharply to the little man, who remonstrated against such treatment, and some altercation took place, which Law put an end to by saying, 'De minimis non curat lex.' It is a maxim very often quoted by lawyers, meaning that the law never troubles itself about very small matters, and, in this instance, was singularly appropriate from the name of the judge and the diminutiveness of his opponent.

Wire was a man of great energy, as well as great ability. He became Lord Mayor in 18[illegible] and, if I remember rightly, he died the day after the termination of his year of office.

Mirehouse, the Common Serjeant, was a blu[illegible]

honest, straight-forward dispenser of justice, who never wasted time. He was always known as 'Taffy,' and was noted for the celerity with which he got through his cases. I have known him more than once sentence a man to seven years' transportation at the end of as many minutes from the commencement of the trial. This was the common form with him. A prisoner might be indicted for stealing a purse from a woman in the street.

The Common Serjeant to the prosecutrix, after getting her name and address:

'Were you in such a street on such a day?'

'Yes, my lord.'

'Had you a purse in your hand?'

'Yes, my lord.'

'Policeman, produce the purse. Is that your purse?'

'Yes, my lord.'

'Did you see the prisoner?'

'Yes, my lord.'

'What did he do?'

'He snatched the purse from me, and ran [illegible].'

[illegible]irehouse to the prisoner: 'Prisoner, do you [illegible] to ask the witness anything?'

[illegible]o, my lord.'

[illegible]oliceman, did you apprehend the prisoner?'

'Yes, my lord, and found this purse upon him.'

'Did he say anything?'

'He said he picked it up in the street.'

'Prisoner, do you wish to say anything to the jury?'

'No, my lord, except that what I told the policeman is true.'

*Mirehouse.* 'Well, gentlemen of the jury, if you believe the evidence, you will say that the prisoner is guilty. He says he picked up the purse in the street. I have walked the streets of London for many years now, and I have never been lucky enough to pick up a purse; perhaps some of you have. Consider your verdict.'

The verdict would be speedily given, and the Common Serjeant, without using a single superfluous word, would sentence the man to transportation.

Mirehouse was very fond of telling juries, after listening to a far-fetched defence, that such casualties or coincidences as it involved had never happened to him. Yet, in spite of the rapidity of the process he carried out, I never saw any justice done by it, and I am sure no one who k[illegible] Taffy well would venture to suggest that he a likely man willingly to inflict any.

Charles Phillips was a celebrity in his day, but his fame seems to have almost faded from public recollection. His oratory was marked by great fluency, enriched with a somewhat extravagant fancy, and was singularly ornate. His published speeches, though really charming in their way, are so bedizened with poetic imagery that they scarcely seem fitted for every-day life. Lord Brougham, who was a friend of his, often bantered him upon his high-flown treatment of the most common-place topics. When some one who had just been listening to an oration by Phillips began [redacted]n his lordship's presence on the beauti- [redacted] rhetoric that had poured from the [redacted]learned counsel—'I doubt about the [redacted] Brougham, 'I should call it horti- [redacted]t floricultural eloquence.'

[redacted]was very shrewd in dealing with facts, [redacted]ery successful with juries, and his [redacted]h accent, which was of the pleasing, in- [redacted]kind—not the rough harsh tones we [redacted]hear from his countrymen—very much [redacted]fforts. But he was utterly guiltless of [redacted]edge of the very first principles of Law. [redacted]xpected that by chance any legal points [redacted]se in a case in which he was engaged, a [redacted], practised junior was generally associated

with him, as a sort of nurse to take upon himself the duty of keeping things straight in that direction.

An attorney in Dublin was asked by his client what counsel he had engaged in his case.

'Oh,' he answered, 'never fear; I have secured Mr. McNally for the points, and Mr. Phillips for the passions.'

With the exception of such sensational cases as crim. con., (then a form of action) slander, assaults, and breaches of promise of marriage, one seldom saw Phillips in any suits but criminal ones, and, even as to Criminal Law, he knew [redacted] what, in a tolerably extensive pract[redacted] scarcely escape becoming acquainted [redacted] is an instance of his simplicity in t[redacted] have already said that a guinea was [redacted] the lowest fee that a barrister co[redacted] There were, however, two or three ex[redacted] what were called half-guinea motions, [redacted] volved simply signing your name to [redacted] paper, and putting the small honorariu[redacted] pocket without the necessity of readi[redacted] looking at any written documents. [redacted] used to call this 'a base fee' (the name o[redacted] of tenure well known to the Law), simp[redacted] the clerk got nothing for himself, whe[redacted] guinea fee he received an additional h[redacted]

on a five guinea one, five shillings, so that the sums really paid by the attorney in these instances were respectively £1 3*s.* 6*d.* and £5 10*s.* 0*d.* One of these motions was once brought to Phillips. It was a mere half sheet of draft-paper endorsed,

| | |
|---|---|
| Jno Doe on the Demise of Jno Smith *v.* Rich Roe. | Rule to sign judgment against the Casual Ejector. Mr. Phillips, 10*s.* 6*d.* |

[redacted] had never seen such a diminutive [redacted] and was quite ignorant of the practice [redacted]. Disgust was visible in his countenance [redacted] he said to the clerk:

[redacted] you mean, sir, by bringing me your [redacted] dirty cases, with a dirty fee like that? [redacted] some of your conveyancers, who will [redacted] used to do your work at half-price. I'll [redacted]'

[redacted]rk did as he was told, and had no difficulty [redacted]nding a barrister who signed the paper, [redacted] the half-guinea, without evincing any [redacted]r sacrifice of duty in doing it.

[redacted]the serjeants had exclusive audience in [redacted]rt of Common Pleas, Serjeant Byles is [redacted]ave made three hundred a-year by signing [redacted]e half-guinea motions. Unluckily for the

Bar, though most equitably for the suitors, these little sinecure fees, which at the outset of my career I used to regard as unmitigated blessings, have been long since abolished.

# CHAPTER VI.

## TRIAL FOR MURDER.

The Murder of Lord William Russell—Spectators in the Old Bailey Dock—Betting on the Verdict—The Prisoner Confesses—Baron Parke—A brilliant Defence—Lord Chief Justice Tindal—The Death Sentence—Mrs. Manning—Dr. Dodd—Phillips—Adolphus—Curwood—Serjeant Ballantine—The Tichborne Case—Lush and Shee—Bodkin and Clarkson—Justice Williams—Baron Huddleston—Sir John Jervis—Serjeant Byles—Thomas Southgate and Joshua Williams, Q.C.'s—Sale of Serjeants' Inn—Sir Richard Frederick.

THE first trial for murder at which I was ever present was that of Courvoisier for the murder of Lord William Russell. Ballantine gives some particulars with reference to this subject, but I wish to add some additional ones of my own. The trial began on Thursday morning, and ended on Saturday night, and, but for a remarkable incident that occurred in the interval, it would have most probably terminated very differently from what it did. The case created a wonderful sensation, and the court was crowded with people of rank and fashion. Among them was the old Duke of Sussex. What would certainly not be

permitted now, even the dock was crammed with strangers, who surrounded and almost came in contact with the criminal himself.

During the Thursday the prosecution seemed to have little chance of getting a conviction, and at the end of it, bets were freely made in the robing-room of three to one that the prisoner would be acquitted. I may say that this was the only time I have witnessed the unseemly course of men betting on the life of an accused fellow-creature. It was perhaps thought that the evidence was so weak that the prisoner was in very little danger. There was a very material link wanted in the chain of proof, for there was little to connect Courvoisier with the crime, except that he was in the house when it was committed, but then he was not there alone. Whoever the criminal was, he had made away with a large quantity of silver plate belonging to the deceased, and every effort to trace it had entirely failed. But what seemed more than doubtful on the first day became by a remarkable coincidence a matter of tolerable certainty at the conclusion of the next.

A Mrs. Piolane, who kept a coffee-house in Leicester Square, and who, in common with most Londoners, took a great interest in the case, suddenly remembered that a foreigner had some time before left in her care a brown paper parcel,

which contained some very heavy matter. The man had formerly been in her service for a short time, but she had never known his name, and the thought struck her that this might be the identical property that had been so eagerly sought for. She, without opening the parcel, took it down on the Thursday evening to the Old Bailey. There it was opened in the presence of the attorney for the prosecution and the under-sheriff, and the crest, 'a Goat,' and the motto, 'Che sara sara,' left no doubt that the hitherto missing link was found. She said she could readily identify the man who had left the package, and her description of him, as far as it went, quite tallied with the outward appearance of Courvoisier. None but those connected with the prosecution knew of this important discovery till the next day, and the outsiders were as confident of acquittal as ever.

It was not until midday on Friday that the name of Mrs. Piolane was called as the next witness. The moment the prisoner heard it, he turned deadly pale; he probably felt that his doom was sealed. The witness was asked if she saw in court the person who had left the parcel at her house, and she unhesitatingly pointed to the prisoner. An electric shock seemed to pass through everyone in court. The revelation was

as sudden as it was unexpected. Charles Phillips seemed to manifest nearly as much emotion as did the prisoner in the dock. He had laboriously prepared a glowing oration, which he felt sure would procure a verdict for the accused, and in an hour or two the court would be prepared for its delivery, but now scarcely any part of it could be adapted to the altered state of things. The case for the prosecution soon closed, but the judges, with the fairness and consideration which in my experience the Bench always exhibit, closed the court early, in order to give Phillips time to think over the line of defence he should take under the altered circumstances.

It was then that the prisoner requested an interview with his counsel, which Ballantine says was very properly acceded to. Here I entirely differ from him; I never heard in modern times of counsel interviewing a criminal in his cell, and when my friend says he himself did it on a subsequent occasion, although of course it is the fact, I can only say I learned it for the first time from his book. I have always understood that it is quite contrary to the etiquette of the profession. There can be no reason or necessity for it, since the attorney can always communicate to counsel all that it is essential for him to know in the interests of the accused.

The prisoner saw both Phillips and Clarkson, and to them he made a clear admission of his guilt. Phillips then sought Baron Parke, and told him that the prisoner had confessed, and asked his advice as to what course he should take.

The baron very naturally rebuked him for making him acquainted with the confession. He ought to have been aware that a judge should have no knowledge of a case, except what he gleaned from the evidence, lest unconsciously his mind should be swayed by facts not properly before him. But he had no hesitation in saying that Phillips was bound to defend the accused to the best of his ability, notwithstanding the avowal the prisoner had just made.

The next morning Phillips began his address, and probably there was a good deal in it that would not have appeared, had it not been prepared before there was any expectation of the stolen plate being forthcoming.

The controversy that was afterwards so long carried on as to the language used by Phillips in one portion of his speech, I have always thought was rather unfair towards him. At all events, it very much annoyed him. It was contended that he had called God to witness that *he believed* the prisoner to be innocent. What he did say was, that *God only knew* whether or not he was guilty.

Perhaps there was a little surplusage of assertion even here, considering the circumstances; but it was very different from the other version. There was a bare possibility, although it was to the last degree improbable, that the prisoner uttered a falsehood when he confessed his guilt. But Phillips must have uttered an atrocious one, if he solemnly asserted that he did not believe him.

The speech was, no doubt, a brilliant one, and it is not impossible that if the jury had, after hearing it, been immediately asked to pronounce their verdict, there might have been some slight chance for the prisoner; but then came the calm lucid summing-up of the judge, and there never was a more considerate, humane, and intelligent judge than Lord Chief Justice Tindal. The mere statement of the facts tending to prove guilt left no room for speculation as to possible innocence. The jury retired, but soon returned with a verdict of guilty. For the first time I witnessed the awful ceremony that immediately follows a verdict of guilty of wilful murder. The clerk, amidst solemn stillness, asks the prisoner whether he has anything to say why he should not be sentenced to die according to law. This merely refers to objections in point of law, and scarcely any answer is ever given. The crier of the court

then makes formal proclamation that everyone is commanded to be silent in court while sentence of death is passed on the prisoner at the Bar. The judge meantime covered his wig with the black cap, and sentence was pronounced.

Courvoisier listened to his doom apparently unmoved. I have since heard a great number of persons sentenced to death, in London and on circuit, but I scarcely ever saw one of them betray any but the most stolid demeanour, except, indeed, Mrs. Manning, who exhibited great fury, and uttered a torrent of abuse against the judges and everyone else connected with the trial of herself and her husband till she was forced by the turnkeys from the dock and taken below.

I suppose that, through the long-continued suspense, the prisoners' faculties are wrought up to such tension that, when the ultimate crisis comes, the senses are almost paralysed.

The morbid curiosity which induces fashionable society to crowd courts of justice when any remarkable criminal trial takes place, is not so strongly manifested now as it was fifty years ago; but the practice that then prevailed of allowing favoured individuals to visit condemned prisoners in their cells, and to attend the service in the prison chapel to hear the condemned sermon, as it was called, has been quite put an end to. It is

said that five hundred strangers were admitted by tickets to the service on the Sunday before Courvoisier was hanged.

It is a curious fact that Dr. Dodd, who was executed for forgery in 1777, at Tyburn, preached his own funeral sermon in prison, before a fashionable audience, many of those who constituted it being his own personal friends.

Charles Phillips was very cynical in his way, and had little of the usual warmth of the Irish character about him. There was at the Central Court a barrister I will call H——, who was not over cleanly, either in his person or his apparel. To do him justice, his complexion was of that dingy and swarthy hue which would have defied every effort of soap and water to render him presentable. Charles Phillips had taken a great dislike to the man. A friend said to him one day,

'We have not seen H—— here lately.'

'What the divil is that to me?' said Phillips.

'But they say he is ill,' observed the other.

'A lucky guarantee that he won't come in my way,' said Phillips.

'But I was told by some one that he had caught the small-pox,' said his friend; 'if that is so, surely you are sorry for him.'

'I am a precious deal more sorry for the small-pox,' replied Charley.

Phillips through the interest of his friend, Lord Brougham, was eventually appointed to a judgeship in the Insolvent Court. An insolvent one day appeared before him, and gave a great deal of trouble and annoyance to the counsel who cross-examined him, by his off-hand insolent demeanour, for which he was more than once rebuked by the judge; but he seemed by no means disconcerted. He was asked about the disposal of his property; his answer was that all his possessions were in the hands of his creditors.

'You do not mean all,' said Phillips. 'You certainly retained for your own use, your self-possession.

Phillips once detected a witness kissing his thumb instead of the Testament, a practice very common among certain quasi-religious people, who thought that whatever risk they ran by false swearing in this world, it would not prejudice them in the next. He said to him, after a proper rebuke,

'You may think to desave God, sir, but you won't desave me.'

When on the Bench he gave a considered judgment, and in eloquent and glowing language, proceeded to give an elaborate statement of the grounds on which it was founded. It was at once appealed against, and the Court of Appeal

unanimously reversed it. Phillips always declared afterwards that 'The only mode of pronouncing a correct judgment is altogether to abstain from giving any reason for it. Let the appeal judges find that out for themselves.' He certainly always adhered to that principle in future, and his decisions were models of conciseness.

Adolphus was a very clever and astute old man, but somewhat sour and crabbed in his manner. I have mentioned him in conjunction with Curwood, as having been shouldered out of a lucrative practice by younger men. He was a widower, and Curwood was always lamenting that he was not one. The latter was sued in the name of Benedict (one assumed by him apparently to avoid publicity), for a very large sum of money by a milliner, for goods supplied to his wife, on the occasion of his daughter's marriage, but the orders were given without his knowledge. On the trial the court decided in favour of Curwood, and Seaton *v.* Benedict became a standard authority for the proposition that where a husband supplies his wife with necessaries fairly suited to their condition in life, he is not liable for debts contracted by her, without his sanction—a decision hailed with great satisfaction by husbands linked to extravagant wives.

The following colloquy was once heard between Adolphus and Curwood:—

'There was a time,' said Adolphus, 'when you and I, Curwood, made a decent income out of this court until that Irish blackguard, with his plausible brogue and slimy manner, deluded people into trusting him.'

'Ay,' said Curwood, 'those rascally attorneys would not take us as leaders, and we are too old to be juniors, so we are squeezed out altogether. But the change is much worse for me than for you. You have no poor dear Mrs. Adolphus to spend the money you have not got, and to tease you out of your life with her whims and caprices.'

'Yes,' replied Adolphus, 'I did not think of that. I admit that I have the pull of you there.'

'I verily believe,' was the reply, 'that if you were to rake the infernal regions with a small-tooth comb, you would not find a woman with a tongue and a temper like Mrs. Curwood's.'

Curwood had obtained a small appointment as a local Commissioner in Bankruptcy, and it was the law then, with regard to many such government officials, that they should take the sacrament within six months of their entering upon office, under certain pains and penalties. Curwood put off the ceremony as long as possible,

and had almost forgotten the necessity of performing it, when one day, as he was passing a church, he saw several persons going in, and it occurred to him that it was a good opportunity for acquitting himself of the obligation. It was probably the first time, to his knowledge, that he had ever been in a place of worship in his life. He sat down in a pew, and, without paying the slightest attention to what was going on, he took some papers from his pocket, and began to read them. When the service was over, he went into the vestry, and asked the clerk for a certificate.

'A certificate of what, sir?' said the clerk.

'Well,' said Curwood, 'I don't know much about it, but I have lately obtained an appointment, and I understand it is necessary I should get a certificate that I have attended—well, I believe it is the sacrament.'

'Sacrament!' exclaimed the clerk. 'Why, lord love you, sir, you have just been churched!'

I cannot help here recording a little incident connected with my brother Ballantine. He was one day prosecuting a case before the Common Serjeant, and the counsel who defended was a wild Irishman, who had never shown his face in the court before, and whose manners were very blustering and uncouth. At length, while

examining one of his witnesses, the counsel defending put to him an outrageously irregular question.

Ballantine hastily rose, saying,

'My lord, I object to this mode of examining a witness.'

'You object, do you, sor?' said the Hibernian, turning round, and gazing at Ballantine with a threatening air. 'I was tould, when I came here, that what I said would be sure to be objected to; but I am not to be put down, sor, and will prove to my lord judge that it is as genteel a question as ever was put by a counsellor to a deponent, and that, in spite of your objection.'

Meanwhile, Ballantine turned to O'Brien, who was seated next to him, and said,

'Who is this fellow? Do you know him?'

'Oh, yes,' said O'Brien. 'His name is O'Flaherty. He is a regular fire-eater, and has killed one man, and winged two or three others.'

'You don't say so,' said Ballantine; and he immediately rose, and said, 'My lord, I withdraw my objection.'

Anyone who knew Ballantine as well as I did, will be amused to find him laying down principles and propounding theories as if they had been the well-studied, firmly-established convictions of a lifetime. There never was a man who had

less settled notions on any subject, legal, social, or political, than he himself. Not that he did not largely expatiate on all these subjects whenever the opportunity offered; but then, the views put forward on the Monday of one week were very likely to be contradicted on the Monday of the next; and the most singular thing about him was that he never could be persuaded that he had ever entertained any other opinions than those he was at the moment expressing.

I have myself more than once told him how much I differed from some of the opinions laid down by him, with reference both to men and things, and he has seemed scarcely aware of how he had treated either, until I reminded him of the statements in question. In truth, every sentiment he uttered was the result of mere temporary impulse. For instance, no one ever knew where to class him in the realm of politics. He got a reputation for being utterly destitute of all creed, because he represented so many, at various times. As Mark Twain called Brigham Young a numerous husband, so we might call Ballantine a numerous politican. He was very like a chameleon in this, that the hue of his sentiments depended upon those of the society in which he happened to find himself; but he differed from a chameleon in adopting a tint exactly the reverse of that ex-

hibited by the men who surrounded him. He might fairly boast of invariably coming to the rescue of the weak and defenceless in the way of argument, and as my brother Gaselee used to say of himself, that he never was more thoroughly convinced that he was right, than when he found himself in a minority of one. If so, neither of them could often be in the wrong.

I am inclined to believe that Serjeant Ballantine's combative tendency was the secret of many of his great successes at the Bar. No doubt he was a very able advocate. His great forte was cross-examination, and he certainly was not amenable to the censure frequently cast on the Bar generally, of needlessly harassing witnesses with questions injurious to their character, and only calculated to outrage their feelings. I have known many instances in which a witness has been produced against him, whose reputation he might have torn to shreds, if it had served the purpose of his client to have the lash administered; but, when the testimony was of no great importance, he has allowed the witness to go down with scarcely a question put to him. Juries are very sensitive on this score. Nothing can be more dangerous to your client than to instil into the jury-box an idea that a witness is being unfairly treated. Many a winning case

has been lost by counsel too strongly and persistently denouncing a witness—although one on all hands admitted to be discreditable, but who was thought still entitled to fair play.

An English jury strongly object to hitting a man when he is down. It may be fairly said of Ballantine that, in spite of his apparent recklessness and a sort of studied Bohemianism about his demeanour, he was very popular among his brethren. When his cynical and sarcastic powers had little scope for exercise, no one could be more genial and good-natured. It ought also to be mentioned that he could be fully relied on to carry out any arrangement he had made with his opponent as to the postponement or settlement of cases and other such matters as frequently occur between opposite counsel. And it does sometimes happen that men, perhaps out of excessive zeal for their clients, do differ as to the precise terms which constituted the agreement between them. Ballantine would rather concede more than he thought he had originally stipulated for, than have it suggested that he was taking advantage of his opponent. That he could be sharp and incisive enough of speech when he pleased need not rest on my authority. When he was counsel for Orton in the Tichborne case, his client complained that he did not sufficiently protect him

in the witness-box—he was too deferential and mild to the Lord Chief Justice, and accepted a decision against him without showing any fierce and vigorous resistance. Ballantine told him that to do so would be quite inconsistent with his position. By the relations subsisting between the Bench and the Bar, he was bound to treat the judges with respect, but he added,

'There can be no objection to your abusing his lordship to your heart's content. It cannot make any difference to you, for if you are convicted of perjury they can only give you seven years' penal servitude, and you surely can't expect much less.'

The pretender actually got fourteen, but the possibility of a cumulative sentence did not then occur to his counsel.

Ballantine was fond of abusing all forms and ceremonies where he might be necessitated to demean himself with studied propriety. He declared, therefore, that he always accepted invitations to public dinners, although he invariably stayed away from them. By this means, he said, the newspapers of the following day, generally taking the names of the guests from the list of acceptances, he got credit for moving in respectable society without the nuisance of attending it.

One day he was saying in the robing-room that he never went but once either to the Lord Mayor's banquet at Guildhall nor to the churching (as it is called) at St. Paul's of the judges in Trinity term, and, as he never intended to go again, he meant to get rid of his scarlet robe,* as it was of no use to him.

One of our craft who was present said,

'Then, Ballantine, you may as well give it to me, for I have not got one.'

'I know a better way of disposing of it,' said Ballantine, 'than by giving it to you.'

'Will you sell it me?' said the other.

'Now you talk something like common-sense,' was the reply.

'Well,' said the would-be purchaser, 'I am rather impecunious just now,' (he generally was), 'but name a moderate price, and I will give you a little bill for it.'

'Would not that, my good fellow, be much the same thing as making you a present of it?' And the peculiar tone in which Ballantine drawled out his remarks on such occasions very much added to their poignancy.

Ballantine used to say that there were only two men on the home circuit who had the

* It is only on the two occasions above referred to that scarlet is worn by the serjeants.

slightest sense of religion about them, and that, singularly enough, although they were staunch friends and sincerely attached to one another, each most devoutly and conscientiously believed that the ultimate destination of the other would be the infernal regions. The two friends thus strongly allied in this life, and so ruthlessly to be severed in the next, were Lush, who was a strict Baptist, and Shee, who was a strong papist.

Of Bodkin and Clarkson I have not much to say, except that the former was a clever, bland, courteous man of the world. The latter, on the contrary, was a rough, bluff, testy personage, who never seemed to sympathise with people in general or with anyone in particular. They were both stout and burly individuals, who, as they sailed along, appeared to carry the greater portion of their cargo in front.

I remember once their complaining to Justice Williams, who always went by the name of Little Johnny, and who was then presiding in the Central Court, that the bench on which they had to deposit themselves was so close to the tables at which they sat, that they could not rise without coming into collision with the edge of it. They had often remonstrated, growled Clarkson, without effect, and they hoped his lordship would assist them in obtaining redress.

'I will do what I can for you, Mr. Clarkson, said Johnny, with a sly twinkle of the eye which was always redolent of fun. 'Mr. Under-sheriff, I have myself witnessed the inconvenience of which complaint has just been made, and I trust some arrangement may be made by excision of the table or otherwise, as your wisdom may devise, to relieve these two *belligerents* from the annoyance to which they are subjected.'

Early in Baron Huddleston's career at the Bar, he shared chambers as well as a clerk with another man—the latter being the actual lessee of the rooms. This arrangement was a very common one at the Temple, for young men waiting for fortune to dawn upon them. Bodkin went one evening to take tea and wine with the future Baron, and he particularly noticed the dirty, slovenly appearance of the clerk who waited upon them, and of whom the host had for the nonce assumed exclusive possession. Bodkin strongly advised Huddleston to insist on a change in the treatment of the youngster's person and apparel, and said it was scarcely decent to have a person in that dingy condition about him.

'I do not much like to interfere,' was the reply, 'he looks upon Mr. T. as his master, and at the utmost I can't claim more than the half of him.'

'Then,' said Bodkin, 'I would, at all events, make him wash my half of his face.'

Clarkson lived at Clapham, at that time (I do not know whether it is so now) a very saintly and evangelical neighbourhood. In an unlucky moment, he invited Sir John Jervis, then Lord Chief Justice of the Common Pleas, to dine with him there, and of course asked several of the *élite* of his neighbours to meet his distinguished guest. Now, Sir John Jervis was about the most unsaintly person in the three kingdoms—he was reckless in speech, even to rudeness, and fiercely intolerant of what he chose to call sentimentality or cant. A lady, at dinner, happened to remark that she had just taken away her children from a school at Brighton, because they did not attend church service three times on Sundays.

'Do you give way to such nonsense as that, madam?' said Jervis. 'It is much better that your children should be worshipping in the fields or the playground, where they would gain health and strength, than be stifled up in a church, listening to what they cannot possibly understand. I get very little exercise during the week, and always spend my Sundays in the country, strolling about my grounds, and imbibing the fresh air that I don't get much of in a court of justice.'

A shock seemed to pervade the guests of poor

Clarkson, as they listened to what they considered the profane words of the learned judge, and a deep silence fell on all around.

At length, *àpropos* to some turn the subdued conversation again took, Jervis said,

'No, I never allow my horses or carriage to leave the stables on a Sunday.'

The spirits of the company revived; they thought there might be some gleam of hope yet for the judicial sinner.

'I am glad to hear you say so, Sir John,' said the lady, who had first called forth the judge's damnatory remarks. 'The Sabbath was intended to be a day of rest, and to afford worldly men time for holy contemplation.'

'That may suit some people's taste,' said Jervis, 'but the fact is, madam, I am a strict disciplinarian in my household; I never allow my servants to get drunk during the week, and I think at all events they are entitled to enjoy themselves on one day out of the seven, and it is quite immaterial to me how drunk they get on a Sunday, provided they are sober during the other six?'

The party broke up at an early hour, and Clarkson never invited the Lord Chief Justice to dine with him again at Clapham. Strict disciplinarian as Jervis declared himself to be, it was generally rumoured that there was one in his

household who exercised more discipline over him than he exercised over others.

It may readily be supposed, after what I have said, that there was not much dignity or formality about Sir John Jervis, either in or out of court. There was, in truth, a looseness of style and a carelessness of demeanour about him that is scarcely ever manifested by members of the Bench. I have often seen him in the morning get out of his carriage at the doors of the Common Pleas, and, if he had a few minutes to spare before the clock struck ten, he would finish his cigar, with one foot on the fore-wheel, while he talked familiarly with his coachman. He could say sharp things sometimes, but seldom ill-natured ones. Serjeant Byles suddenly stopped one day while addressing him. The chief had his eyes on an open book.

'Go on, brother,' he said, looking up.

'I thought your lordship was not listening,' said the serjeant.

'I am not asleep,' was the reply.

'You very seldom are, my lord,' said Byles.

'You try me very hard though, brother, sometimes,' retorted the chief.

In a case in which Jervis was counsel for the plaintiff, his adversary made him an offer of a sum of money, by way of compromise, which

he said he would submit to his client. In his usual brusque style, he leaned down to the latter, who was seated below him, and said,

'What will you take?'

'Nothing, Sir John, thank you, this morning,' was the reply.

Clarkson told us of a conversation he once had with Danby, the wig-maker of the Temple. He went there, as he usually did, to get his hair cut, and, while the operation was going on, he noticed a boy of about twelve years of age playing in the shop. He asked Danby whether the boy was his.

'Yes, sir,' was the reply, 'to the best of my knowledge and belief.'

Clarkson said his phraseology had always a legal flavour about it.

'And what do you mean to make of him?' was the next question.

'Well, sir, as at present advised, and without prejudice, if he turns out a sharp, clever fellow I mean to bring him up to my own business but if he should prove to be, in the efflux of time, a dull, idle blockhead—as I think it is not unlikely he will—I shall send him to the Bar.'

Probably the discriminating parent is by this time gathered to his fathers; and what became

of the hopeful youth, whose future destiny thus hung in the balance—whether he is making wigs or wearing one—I cannot tell. I daresay the then proprietor of the business and the boy thought he was acting very judiciously upon the rule—not too frequently recognized—namely, that of studying the idiosyncrasies of a stripling before deciding on what should be his future means of gaining a livelihood. We sometimes find a boy prematurely given to vice and dissipation, sent into the Church; one who has an impediment in his speech, and a hatred of controversy, is entered for the Bar; while another, who has shown an early taste for nap and horse-racing, is destined for the Stock Exchange. It does often happen, however, that genius and energy suffice to overcome all apparent obstacles, whether mental or bodily, and the selection of a professional career, which, according to all human foresight, would seem doomed to failure, has in the result an astounding success.

I have in my mind at this moment an instance in the case of my late intimate friend, Thomas Southgate, Q.C. I believe, in his infancy, he was struck with what is called infantile paralysis, which, while impairing the physical powers, leaves the faculties of the mind intact. His features were distorted; his right arm was palsied, and

he could only write with his left hand. His movement from place to place was rather a shuffle than a walk, and his speech was affected, though not unpleasantly so. With all these seeming disqualifications, and against the well-meant advice of his relatives and friends, he determined on going to the Bar. He soon got into practice, and eventually became one of the most distinguished among those members of the profession who attached themselves to the Chancery Courts. He and Joshua Williams, Q.C., had the highest compliment paid them that any legal practitioner could well receive. When the serjeants contemplated disposing of Serjeants' Inn, these two counsel were unanimously selected by the eighteen Common Law judges as well as by the non-judicial members to advise them as to their position and their rights, and they continued to act in the character of their advisers until the sale and the partition were completed.

To be thus chosen by the judges of the land from the whole body of the Bar, was a just tribute to their talents and their distinction. Southgate acquired a very large fortune. A few years before he died he made it a rule that he would not make his appearance in court for any client for a less fee than fifty guineas, and he told me that during the year before he came to this resolve, his

professional receipts amounted to twelve thousand guineas. He was a most amiable, and I need scarcely say, a most intelligent man, and a highly interesting companion. There never was a greater contrast between the ostensible and the real—the physical and the mental—attributes of any individual than was exhibited in his career.

Before I part with my learned friend Clarkson, I must mention a little incident which will give a slight idea of the terror excited in some minds by his rough and domineering manner. He was retained to go before the magistrates in Surrey, to ask for a license to a public-house newly erected. The chairman presiding at the sessions was Sir Richard Frederick, a fine old English gentleman, who was very popular with us Surrey men; but he was somewhat simple-minded as well as eccentric. Clarkson was a stranger to him, and appeared, as was customary at licensing meetings, without robes or any *indicia* of his being a member of the Bar. He began to lay his case before the Bench in his usual blunt and dictatorial style, which rather shocked the dignity of our friend the baronet, who was determined, as it is technically called, to take him down, and began a lecture on the respect due to the Bench.

A magistrate who was sitting beside him whispered in his ear,

'You had better mind what you are about, Sir Richard; this is Mr. Clarkson, the Old Bailey counsel. He will not stand badgering from you or from any of us; so take care.'

Poor Sir Richard was dumbfoundered for the moment. At length he stammered out,

'I beg your pardon, sir; I was not aware that you were the *notorious* Mr. Clarkson. Pray continue your address.'

Clarkson's was a very corrosive style of oratory, and he was generally said to be much fonder of his specie than his species. He could shed a tear or two on occasion, but he did not keep them well under command. He generally exhibited emotion in the wrong place; sometimes long after everyone else had finished.

## CHAPTER VII.

### SOME OF MY CONTEMPORARIES.

Serjeant Wilkins—Alderman Kelly—A Scarecrow becomes a Famous Barrister — Serjeant Wilde—Wilkins as an Orator—Like Charles Phillips—A Nonsuit—Rivalry at the Bar—Advisability of beginning a Legal Career when Young—Serjeant Parry—Aldersgate Institution—Lord Brougham—Parry begins Practice at the Central Criminal Court—An Attack of Paralysis—A Singular Coincidence—A Piteous Sight—The Lord Chancellor (Lord Halsbury)—Russell Gurney—The Recordership of London.

CHARLES WILKINS, afterwards Serjeant Wilkins, enjoyed considerable celebrity during his not very prolonged career at the Bar. He came to it late in life, but soon made his mark in criminal cases at the sessions and assizes. He was sure to be retained in all sensational cases that were tried on the northern circuit. On one occasion his clerk rushed into his room, rubbing his hands in great glee, and exclaimed,

'Another horrible murder, sir, in York.'

Probably no man ever underwent greater vicissitudes than had fallen to the lot of Serjeant Wilkins. He was the son of a medical man in

large practice at Greenwich, and had for a step-mother a sister of Alderman Kelly. His father treated him with great harshness until he became a notability, when he suddenly became not only proud but fond of him.

He used to be compelled to sleep outside the paternal bed-room door, that he might be nearer the night-bell. He had been intended for the medical profession, and, being fond of study, had got some little insight into the science, which he found very useful in his practice at the Bar. Getting disgusted, however, with the domestic tyranny that beset him—while still young—he ran away from home. For a time he lived as best he could, and he told me that for a lengthened period he subsisted on sixpence a day, by playing in the corn-fields the part of a scarecrow.

Once I happened to be with him at Birmingham, when we went into the extensive show-rooms of Messrs. Jennings and Betteridge, the manufacturers of papier-maché commodities. He was then known to fame, and the proprietors themselves showed us over the premises, treating him with the utmost deference and respect. When we came out, he told me that he had once offered to grind colours for that very firm for four shillings a week, but that his proposal was at once rejected.

He at one time kept a very large school at Birmingham. He then became the editor of a newspaper, and was eventually induced to come to the Bar, by the recommendation and assistance of Serjeant Wilde, to whom he had been of considerable service in his election for Newark.

He used to say that the first intimation conveyed to his own mind that he had more than an ordinary gift of speech, was at some Shakespeare festival held at Stratford-upon-Avon. He was then, he said, only known as the editor of a journal there, and at the dinner he sat at the lower end of the table, among the undistinguished visitors. When the chairman proposed 'The memory of Shakespeare,' and called upon Charles Wilkins, Esq., to respond, he said he was immediately covered with a cold perspiration, and his legs tottered under him as he rose to reply. But he had always been an idolater of Shakespeare, a fact which was well-known to many of his fellow-townspeople. He began timidly; but, as he warmed with the subject, and poured forth thoughts and words that had often occurred to him in reflecting on the genius of his adored poet, he soon found that he was thrilling his audience, and, when he sat down, deafening cheers greeted the display.

Ballantine says that Wilkins's oratory was

somewhat stilted; but considerable allowance must be made for such criticism, in face of the consternation spread among the regular practitioners at the Central Court when it was known that Wilkins was coming as a competitor amongst them. When he did come, he proved that there had been good ground for jealousy, for he was highly successful. But he did not remain there long; he soon obtained the coif, and of course ceased to be an habitué of that court, as well as a rival to the established leaders who practised there. No doubt he was remarkably eloquent, and possessed a voice rich and sonorous, and a style and a manner very impressive and emphatic.

It is true that, like Charles Phillips, he never could have become a great leader at *Nisi prius*, except in a very limited class of cases, from a want of knowledge of law, and of a familiarity with practice. Not only had he come to the Bar too late, but his was not a mind that could submit to plod through the dreary details of Chitty or Archbold.

He was once conducting a case for a plaintiff when, as far as the facts went, all was going on as smoothly as possible, and Wilkins was anticipating a swinging verdict, regardless of a warning that had been given at an early stage, by a wily pleader, that ultimate success was far from certain

in point of law. No sooner was the plaintiff's evidence concluded than his opponent applied to the judge for a nonsuit, which, to the serjeant's dismay, was at once granted. He turned round to his junior, and said, with much solemnity,

'It is my decided opinion that these infernal nonsuits will be the ruin of the country.'

He came to the Bar with very slender pecuniary means. He was generous and unthrifty. The truth is, he became too suddenly successful, and launched into expenses which had nothing to warrant them, except the hope of still greater professional good fortune. He became embarrassed and died worse than poor.

The upper circles of the Bar had always looked somewhat coldly upon him, although I am far from suggesting that this arose from any jealousy on their part. To the honour of the profession, it may be asserted that its members are as ready to admit individuals of rising talent to their intimacy and friendship as any class of men can be;* and moreover the talent of Wilkins was of that single and exceptional character which could scarcely excite the fear of rivalry, except amongst a very

* I am here speaking of the leaders of the Bar generally. I fear I must exclude those of the Central Criminal Court, and other such narrow and contracted jurisdiction at that time. I look upon these as protectionists entirely shut out from the free-trade experience and associations of the profession at large.

small section of practitioners; but his course of life had been an eccentric one. He was by no means a man of the world, although he had seen much of it, in its various phases, and he rather resented the want of sympathy that was shown him on his entering the profession. He was, however, much beloved by the juniors, whom he was always ready in the most amiable way to assist and encourage.

A man may, by great legal learning or by great eloquence, singly, attain special success at the Bar; but an early training, *ad hoc*, is necessary to both one and the other. It is difficult to get imbued with the principles of law in middle life. The system has got saturated with other influences which refuse to be dislodged, to make way for fresh elements. It is certainly so with forensic eloquence. It must be cultivated early with a view to its particular exercise in the direction of law. A man of forty may be a first-rate orator in the House of Commons, or on the platform, but he might find it not quite the style suited to a court of justice. And it is for the same reason that lawyers, as a rule, do not greatly distinguish themselves in Parliament.

I venture to think that a young barrister of twelve months' practice at sessions would, in a case involving no law and depending entirely on

facts, defend a prisoner with a better chance of success than either Mr. Gladstone or Lord Beaconsfield could have done it, notwithstanding their enormous powers of oratory. I am not putting our pretensions very high when I suggest such a comparison; in fact, I ground my proposition on what is called a 'knack,' only to be acquired by practice, just as a shoemaker could make a pair of shoes, or a young girl could hem a pocket-handkerchief, much more skilfully and neatly than the two illustrious persons I have mentioned could do the same things.

Wilkins had, to a certain extent, overcome the defects of early education, so far at least as concerns the class of cases to which his talents were adapted, but a sense of his general deficiencies was ever present to his mind, and produced on it a most depressing effect.

His life had been a chequered one, and its end was sad and gloomy.

John Humphreys Parry (Serjeant Parry) came also to the Bar somewhat late in life, but his early training was quite on the lines of the pursuit on which he had set his mind. I knew him long before he was called to the Bar. We both belonged to the Aldersgate Institution, one of those novel establishments so earnestly and successfully promoted by Lord Brougham. Parry spent his

leisure time there, listening to lectures and delivering them, constantly speaking at its debating society, and storing his mind with knowledge that he afterwards found most useful to him.

He was engaged for some time in the British Museum, and there he found a field for study which he was not likely to neglect.

He possessed a strong, vigorous intellect, was full of information on most subjects, and was rather disposed to be dogmatic; but withal pleasant and entertaining as a companion.

He began practice at the Central Criminal Court, and soon proved that he was worthy of exciting the enmity of the clique there, who were naturally jealous of any well-endowed interloper who might possibly interfere with what they seemed to consider their vested interests. But he manifested great independence, and in a short time got into tolerably lucrative business, in spite of the opposition of his competitors. The fact is that he, like several others, did not limit his aspirations to success in mere criminal trials. He treated the court as a useful school where profit and instruction might be gained, but he never looked upon it as a permanent home. After a time, though without entirely deserting it, he never allowed practice there to interfere with civil business elsewhere; whereas, to become one

of the select, within its pale, required a devout allegiance to its monthly requirements.

Parry never pretended to be a good lawyer. He picked up from time to time sufficient law for his needs, and was always fairly equal to the occasion. After he took the coif, he got into considerable practice, which he retained nearly up to the time of his death. A few years before it, he had a slight attack of paralysis, but it left no trace upon his intellect, which remained bright and lucid to the last.

By a singular coincidence his wife, who was much younger than himself, died a few hours after him. It was a piteous sight to see their youthful children at the funeral weeping over the two coffins of the parents, of whom they had been so suddenly deprived, and watching the descent of their remains into their final resting-place.

The present Lord Halsbury (Lord Chancellor) also began life at the Central Criminal Court. He speedily got into practice, but he was one of those who only used that court as a stepping-stone to a higher range of duty. His visits to it became intermittent until he emancipated himself from it altogether. I know that he was pressed by influential people to offer himself as a candidate for the Recordorship of London on the death of Russell Gurney, and that was at a time when there was

but little probability of his obtaining the high office which he now so worthily fills. I believe there was every chance of his succeeding had he chosen to yield to the pressure. But he declined to adopt the apparently tempting suggestion. The salary was three thousand pounds a-year, and the duties far from laborious. Many would have preferred the position to that of a puisne judgeship, but my learned friend's ambition soared into higher regions still, and it has been realised in his possession of the highest dignity that it is possible for a barrister to occupy.

# CHAPTER VIII.

## THE BENCH AND THE BAR.

A Barrister's first Brief—Nervousness—Sensitiveness the Accompaniment of Genius—Justice Watkin Williams—Anecdote—Sir George Jessel, the Master of the Rolls—Anecdote—Singular Example of Nervousness—Tom Jones—His Sayings—Lord Chief Justice Cockburn—The Northern Circuit—Baron Martin—Sir John Karslake—Avory—Baron Martin's liking for Horse-racing—His Deafness—The Dean of Winchester—Serjeant Sleigh—Frank Talfourd—The Object of all Trials—A curious Case.

PERHAPS there is no more painful or harassing position in which any individual can be placed than that of a young barrister when, for the first time, he has to address his most grave and reverend seniors on the judicial Bench.* The prospect of having to face it has probably seriously interfered with his digestion for many days before. He sees that those to whom his feeble appeal is to be made are in every sense elevated so far above him. He fancies that all eyes are fixed upon perhaps the only perpendicular individual in a

* That great first cause least understood, as somebody called it, is the Rubicon in barristerial existence.

crowded court; that all ears are open to catch what after all, he fears, may be mere inarticulate sounds. He has not only marshalled his thoughts in proper line and order, and reviewed them over and over again, but has got by heart the sentences—even the very words—in which they are to be expressed; but he trembles lest the transposition of an adjective or a verb may possibly disconcert him. He may, however, be quite sure that he will receive the sympathy and assistance of the judges, and may probably hear his real name pronounced by them in tones of kindly recognition, although they never saw him before; for they generally contrive to learn the surname of every novice that comes before them, and it is astonishing how far the apparent knowledge goes in enabling the young recruit to stand at ease.*

When the end has come, he sits down, delighted that he has got through the trying ordeal, and thinks it is not quite so awful as he had anticipated. In most instances of occasional nervousness, where the effect is so apparent, it is the novelty of the situation that appals.

I have known men who for years have discussed cases in the ordinary courts of justice with perfect ease and coolness, but when they have

* It carries with it a suggestion of familiarity which, in his disordered state of mind, is very refreshing to the patient.

been called upon to argue a case in the House of Lords, they have been as tremulous as an aspen. I should have little hope of that man's future, who was perfectly cool and unabashed when he made his first entry into professional life. It would at least betoken an absence of sensibility in his composition, and sensibility is an attribute most highly essential to a public speaker. A man whose province it is to persuade or convince others, by the mode of detailing any particular set of circumstances, must be capable of feeling and appreciating the full influence of cumstances upon himself. A sensiti outward impressions is often the test, b all times the necessary accompaniment of g

A young barrister, some time ago, came be Justice Watkin Williams, who, desiring as to learn his name, sent down a sma enquiry to the usher. This latter too was a man, and, instead of seeking the inform y from others, went at once to the co f, and said,

'e judge, sir, wishes to know your name.' reply in a tone loud enough to be heard the court was,

'Oh, my name is ——, I'm not ashamed of it. What is the name of the judge?'

hat young gentleman fails in obtaining the

prizes of his profession, it will not be from want of confidence.

I remember another case of a barrister, then recently called, appearing before the Court of Appeal, over which the Master of the Rolls, the late Sir George Jessel, presided. The novitiate had evidently prepared a most elaborate statement of his case, and seemed determined that it should be heard throughout. He poured forth argument after argument into the unwilling ears of the judges, who tried in vain to put an end to him. [illegible]re was a judge who could put down a [illegible] and implacable advocate, and make him [illegible]ss of himself than was habitual to him, it [illegible]ir George Jessel; but in this instance he [illegible] overmatched. The enemy had always some [illegible]oint to open out, and of course it must be [illegible] before it could be refuted. At length [illegible]tioned one, which Sir George said he would [illegible]e refuse to hear discussed—it ought to have [illegible] taken in the court below.

'But, my lord, I did take it in the court [illegible] the judge stopped me.'

The chief revived. He looked forward o[illegible] desk, and said earnestly to his persecutor,

'Do you mean really to say, sir, that he stopped you?'

'Yes, my lord; he really stopped me

'Did he?' said the chief; 'you would much oblige me by telling me how he did it; the process may be useful to me in future.'

The most singular example of nervousness that ever came under my notice was that of a learned friend of ours, who was invariably known as 'Tom Jones.' To have used the surname without the prefix of 'Tom,' would have inevitably led to the inference that you were speaking of some one else. This arose, perhaps, from the fact that there were many Cambrians at the Bar that rejoiced in his patronymic. The object probably was to distinguish one who was, however, in other ways very distinguishable. He would have been characterized by those who did not know him, and who had only heard from a little distance, as possessing more and assurance than ordinarily fell to the aggregate, of any other half-dozen seemed to care little what he said said it; and this, whether he was addressing Bench, or dallying with the Bar. have sat next to him in court, who has shaken and his burly frame has whenever he had to address the Bench no sooner had he risen to his legs than of timidity was obliterated. The truth suspect, that the effort he made to appear

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'O'erleaped itself, and fell on t'other side.

He was once moving for a new trial before a full Bench in the Common Pleas, Justice Byles being one of four judges. Our friend grew very warm and earnest in urging his client's claims, and at length he said, in emphatic tones,

'No one, my lords, who looks at this case with common fairness and honesty, can hesitate for a moment in declaring that there ought to be a new trial.'

Byles observed: 'This is rather strong language to use to us, Mr. Jones. I hope you think that we, at the least, are commonly fair and [redacted]est.'

[redacted] shall see, my lord,' said Tom, 'we shall [redacted]

[redacted]r occasion, after a very long argu-[redacted]d Chief Baron said to him, during [redacted]

[redacted] finished your observations, Mr. [redacted]

[redacted], my lord,' was the reply. 'I handed [redacted] lordship my sixth volume of Meeson [redacted] and I observe that your lordship has [redacted]ed it.' The book was at once brought him. 'Now, my lord, I have quite said the imperturbable Tom.

In the Queen's Bench, any such display of eccentricity, or what, perhaps, might be rather called impertinence, was a somewhat risky proceeding. Chief Justice Cockburn was not the person to tolerate anything like flippancy or levity on the part of those who appeared before him. He was very strict in maintaining dignity in his court and respectful deference towards the members of the Bench. But I should like to guard myself against insinuating that there was anything approaching martinet assumption about him. In court, his was the dignity of a refined, highly-bred gentleman.

Tom Jones thoughtlessly ran the risk once, and came off without any evil consequences. He was arguing some case in that court, and advanced some maxim of law, which he treated as incontrovertible. The Chief Justice said to him:

'What authority have you, Mr. Jones, for that proposition?'

'Oh, my lord,' said Tom, 'I should not have thought any authority was required for so well-established a principle. Here, usher, just get "Blackstone," or "Chitty," or any other *elementary* book, and hand it up to his lordship.'

The chief saw that his question had been an inadvertent one, and he admitted it by his silence. He was never above acknowledging an error, how-

ever persistently he had for a time maintained it.

Our friend Tom Jones was a little lengthy sometimes in the exposition of his client's rights, and one day the Chief Baron said to him:

'Mr. Jones, this case has occupied a great deal of time, and we have a very long list of cases to get through.'

'My lord,' said Tom, 'I have carefully looked through that list, and I did not find there was a single cause in which I or my client was in the slightest degree interested.'

The Chief Baron was too good-natured, and his disposition too appreciative of smart sayings, to do otherwise than busy himself with some papers, so as to appear not to have heard Tom's audacious reply.

It must not be supposed, however, that every counsel would have been permitted to take these liberties, and, as it were, beard the Bench with impunity, as our impulsive friend was so frequently bent on doing. But everyone knew that he had not the slightest intention of being disrespectful. He was, moreover, very much liked for various jovial qualities, and was not a man at whose sayings anyone would care to take unmeant offence. It was his way, and, although it was not as other men's ways, he was tolerated for the

amusement afforded by his frequent departures from conventional etiquette.

On the northern circuit he was once going into the court at Liverpool, when he was stopped by a policeman, who asked him what business he had there.

'Well, my good man,' said Tom, 'if you wish particularly to know, I may inform you that I have not quite as much business as my desires and my especial merits might entitle me to; but I have a little, and I am going into court to look after it;' and he stalked onwards.

Tom was once arguing before the full court, consisting of four judges, and had been dwelling with considerable unction on a point which he considered to be the mainstay of his case, when one of the judges interrupted him, and said, 'You have dwelt fully with that matter, Mr. Jones, four times already.'

'No, my lord,' was the response, 'I think only three; it is a point very difficult to understand, and, as there are four of your lordships, I thought I ought in justice to my client to dwell upon it once again.'

The following is not a bad illustration of what, I suppose, I must call his irresistible tendency to disclose what at the moment was uppermost in his thoughts.

A very heavy case was coming on for trial upon the northern circuit, in which Sir Alexander Cockburn, then Attorney-General, had been specially retained. Second to him was Hoggins, Q.C., a clever senior on the circuit, and in good practice, but who had not the ability and, what was perhaps almost as important, the prestige of his renowned leader. It appears that the day before the case was to be tried, or, at all events, on the eve of the speech to be made by him, Cockburn was summoned to London by the Prime Minister. An important debate was coming on in the House of Commons, in which a speech from him might involve the stability of the Government. There was no help for it. It was clear that his client must be deprived of his services, and, equally so, that the duty of conducting the case to an end would fall upon Hoggins. At this the latter was naturally annoyed. He was next morning detailing his grievances in the robing-room, and said how hard it was that he should be so suddenly hampered with the responsibility of such a case. He would not have cared if he had received an earlier intimation of what he was expected to do, he might then have had time to prepare himself for the task, and should have felt quite equal to the occasion. But, as it was, the position was a most

hazardous and difficult one. Tom Jones, who happened to be a junior in the same case, but on the opposite side of it to that which Hoggins represented, was in the robing-room at the time, and was charmed to hear of the change that had taken place, and he chuckled at the thought of the improvement of his client's prospect of success by the substitution of the one leader for the other. He listened to Hoggins's complaints, and, among other things, heard him dwell on the hardship of his having to make the big speech, while his absent leader was the recipient of the big fee. Tom could contain himself no longer; he seemed to be deeply moved by a reference to this important feature in his friend's sources of annoyance. He went up to him and whispered in a tone of feeling condolence,

'My dear fellow, don't trouble about the big fee. I am sure my clients will be delighted to make that up to you.'

Tom Jones died at a comparatively early age, and the event deprived us not only of an excellent companion, but also of a great deal of merriment and fun.

No judge on or off the Bench ever acquired more of the esteem as well as the affection of the Bar than Baron Martin, and it was gained in no other method than by deserving it, for he never

went out of his way to pay a compliment, and never sought unduly to curry favour with any man. In differing from his colleagues, which he not infrequently did, he took no roundabout method of expressing his dissent, so as to render it less unpalatable to his brethren. His thoughts were blurted out precisely as they were engendered in his mind, regardless of those present; but they always bore the stamp of honest conviction;—their value might be more or less, but they were always genuine coin. His language was nervous and expressive, without the slightest circumlocution or the least semblance of ornament; contrary to the opinion of the great French diplomatist, he believed that speech was given to us in order that we might make ourselves understood, and if this was accomplished its mission was thoroughly fulfilled. There was never any difficulty in understanding *him*. His accent was very peculiar. It was like himself, thoroughly original. It was neither English, Scotch nor Irish, though, if it had followed its birthright, it would have betrayed much more of the brogue than it did. It was, in truth, a mixture of all three dialects, but it was a chemical rather than a mechanical mixture, for it was impossible to find the least trace of either language whilst listening to his voice. If not particularly defer-

ential to his colleagues, he was not a whit more so to his father-in law, the Chief Baron.

Sir John Karslake was moving in the Court of Exchequer, for a new trial on the ground of misdirection, and the improper rejection of evidence. The case had been tried before the last-mentioned judge, who, when Sir John sought to read some short-hand notes of what took place before the jury, strongly objected to it, and held that the judge's note of what occurred was the only authentic account that counsel could refer to. A wordy contest was kept up between the Chief Baron and the persevering counsel for some time, when Baron Martin, who sat next to his father-in-law, and had hitherto remained silent, suddenly cut short the controversy, by saying,

'Give us, Sir John, from your shorthand notes, what the Chief Baron said. It can't do us much harm to hear it.'

The chief contended no longer, and the notes were read.

Baron Martin was fond of contrasting the omnipotence of Parliament with its assumed omniscience, and in terms not very flattering to the latter. He used to say that the way in which statutes were framed was a disgrace to the country, and that a parliament of school-boys would transact that line of business at least as well.

After the passing of the statute which rendered one partner criminally amenable for fraud upon his co-partner, an indictment drawn under the new Act was ready to be presented before the grand jury at the Chelmsford Assizes. It had been prepared by my friend Avory, the deputy clerk of the arraigns, who was a sort of incarnation of Criminal Law, and who, I believe, never made an official mistake in his life—I mean a detected one, for we all took it for granted that he could not go wrong. Baron Martin was the judge on the circuit, who had to charge the grand jury, and he evidently knew nothing of the Act above mentioned—quite excusably, for it had only very lately received the royal assent. After dealing with several bills, he came to the one in question, and said,

'Gentlemen, here is a bill that I can make neither head nor tail of. It charges a man with robbing his own partner, a thing never heard of in this world, nor, I should think, in any other. It is a maxim in law and in common sense that what belongs to one partner belongs to the other, and you might just as well indict a man for stealing his own goods. I advise you to throw out the bill.'

Poor Avory, who sat immediately under the judge, stood up on his seat in great consternation

with the statute in his hand, and whispered to the Baron,

'But, my lord, here is the Act of Parliament just passed, which in terms declares that one partner can be indicted for robbing another.'

'Surely there can't be anything so ridiculous,' said the judge. 'Let me see the Act.' He began poring over it for a minute or two, and said, 'Well, gentlemen, if Mr. Avory says so, I daresay it is all right, but it is quite clear to me that those who drew this statute knew nothing about the law. The evidence does not seem very clear, and I would still advise you to throw out the bill.'

I believe the Baron would never have forgiven himself had he been the first to give countenance to such outrageous legislation.

The Baron was a great connoisseur in horses, and was frequently seen on the various race-courses, though not quite so often as he might wish. A friend met him once in the Bois de Boulogne at Paris, on a Sunday, when the races were going on, and said,

'It would not do for you, Baron, to be seen in England amid such scenes as this on the Sabbath day.'

'Well,' said the judge, piteously, 'I cannot help it. What would you have me do when they will not race here on any other day than Sunday?'

He seemed to think that the alternative of staying away from a race-course when he had the opportunity of being present was not to be thought of.

The Baron always had the greatest horror of what were called 'prophets,' a class of sharpers who frequent race-courses, and profess to give weak-minded men who are given to betting 'the straight tip,' as I believe it is termed in turf slang; that is to say, they pretend to have private and confidential intelligence from high quarters that enables them to predict with absolute certainty the horse destined to win any particular race. This knowledge they are ready for a consideration to impart to their confiding dupes. When a 'prophet' came before him judicially, he generally let him know, in pretty strong language, the peculiar estimation in which he held him.

On one occasion, after he had become deaf, he was trying a racing case, an exercise of his functions that he revelled in. One of the counsel engaged in it was named Stammers, a solemn, formal, sententious personage, who seldom made a speech without quoting passages from Scripture. In addressing the jury, he was about to pursue his old habit, and got as far as 'as the prophet says,' when the judge interposed,

'Don't trouble the jury, Mr. Stammers, about

the prophets; there is not one of them who would not sell his father for sixpennyworth of halfpence.'

'But, my lord,' said Stammers, in a subdued tone, 'I was about to quote from the prophet Jeremiah.'

'Don't tell me,' said the Baron. 'I have no doubt your friend Mr. Myers is just as bad as the rest of them.'

Once when he went as a judge on the western circuit, he was invited with several members of the Bar to dine with the Dean of Winchester, whom he had never met before. A few days afterwards a friend asked the dean what he thought of Baron Martin.

'Well,' was the reply, 'he does not appear to me to be a man of enlarged information. He actually never had heard of William of Wykeham, and wanted to know who he was.'

Baron Martin was asked by some one what he thought of the Dean of Winchester.

'Well,' said he, 'I can't say I think much of him. He seems very deficient in a knowledge of what is going on in the world; he absolutely did not know what horse had won the last Derby.'

He rebelled strongly against affectation in any shape, but more especially when it took the shape of self-glorification, or when he saw any attempt

on the part of a member of the Bar to vaunt his doings before a jury. He was trying in the Central Criminal Court a case which was so very far advanced that it only awaited the speech of the counsel for the defence. Sleigh (afterwards Serjeant Sleigh) was engaged for the prisoner, though he had taken hitherto very little part in the proceeding, being engaged elsewhere; but he had left a friend to conduct the case for him so far. After some little delay, he rushed into court, and, beginning to address the jury, he complained piteously of the great hardship thrown upon counsel by the fact that four courts were sitting at the same time. He was retained in all of them, and it was very unfair that prisoners should lose the valuable services of counsel by the course that was pursued. He was almost exhausted by the labours cast upon him, and he was going on in the same strain, when Baron Martin interposed and said,

'Stick to the point, Mr. Sleigh, stick to the point; the charge is an attempt to murder.'

He had spent all his life in studying law, and would have thought it a wasteful sacrifice of time to expend it upon any lighter species of study. He was therefore remarkably deficient in what he would never have been brought to acknowledge were the *literæ humaniores*. Law was with him

the highest acquisition to which the human intellect could aspire.

He on one circuit took Frank Talfourd round with him as his marshal. One evening after dinner, rousing himself from a short nap, he found Frank reading Shakespeare.

'I find, Frank,' he said, 'you are always reading plays, and especially Shakespeare. I never found time to read him myself; but I suppose he was a big fellow.'

'Yes, Baron,' was the reply, 'he is generally acknowledged to be the greatest poet the world ever produced.'

'Well,' said the judge, 'I think I should like to read one of his works, just to see what it is like. Which do you recommend?'

'They are all admirable productions,' replied the marshal, 'but I have again just been reading "Measure for Measure," and I think that will perhaps please you as well as any.'

'All right,' said the Baron, 'lend it to me, and I will read it before I go to sleep.'

The next morning, he was, of course, asked how he liked the play.

'Well,' was the Baron's reply, 'I can't say I think much of it. It contains atrociously bad law, and I am of opinion that your friend Shakespeare is a very overrated man.'

Poor dear old Baron! The last time I saw him was at one of our dinners (nearly the final one) at Serjeants' Inn. He was then very infirm, and his deafness had so increased that we were obliged to put our lips close to his ear to enable him to hear a syllable of what we said. He always spoke of the home circuit with great regard, although he had been on the northern, and he told me he always chose it whenever he had the opportunity; and we were just as charmed to have him to preside over us.

It is singular that, even in these enlightened days, we should hear disparaging remarks made against the Bar for advocating cases which they have reason to believe, or, what is worse, which they know, to be unjust. And this is frequently said by men who admit that the judicial Bench is as free from all reproach, that the judges are as pure and impartial as the fallibility of human nature will permit. It should be remembered that these judges have spent the greater part of their lives at the Bar, and, if the censure were of the slightest validity, it is pretty certain that such training would leave some taint behind it that would necessarily be developed on the judgment-seat. I may fairly quote here, with a slight alteration of a word, the old Latin saying, that

'Nemo repente fait justissimus.'

The mistake arises, on the part of those who cast such reflections, from their not understanding the principle on which the Bar is constituted. We have seen that as honest and upright a judge as ever lived told Charles Phillips that it was his bounden duty to continue to defend Courvoisier, in spite of the confession that had been made to him; and, consistently with reason and justice, he could have given him no other advice. In its essence, the Bar forms a mere practical machinery by which the intellects of contending litigants are placed upon an equality. What chance of success, or of obtaining justice, for instance, would a stolid, illiterate defendant have against an astute, educated opponent, if he had to plead his own cause before an appointed tribunal? As it is, the superior ability of the one may be neutralized, and the blundering of the other be obviated, by the selection of trained experts, who will respectively represent them.

The liberty of every man depends upon a strict and impartial administration of the law as it at present exists, in spite of what men in high positions have lately insinuated to the contrary. The judges declare authoritatively what the law is, and juries pronounce their decisions on the facts. The two form a tribunal to which, in general,

every individual has a paramount right to appeal, and it may easily be demonstrated that, if members of the Bar were to exercise a discretion as to what cases they would advocate or what they would reject, they would be usurping functions that did not belong to them; and their *raison d'être* would be destroyed.

I have frequently been engaged in a case for the defence which, on a perusal of the brief, I have thought to be utterly hopeless, and have believed my client to be not quite so honest as he should be; but afterwards, on the facts being thoroughly sifted before a judge and jury, I have been just as firmly convinced that my first opinion was utterly erroneous. If I had refused to appear for the client because I thought he was guilty of the offence alleged against him, other counsel would have been, probably, similarly impressed, and must also have done the same. Thus an ignorant, untutored man, unable to contend with the prosecuting counsel, would, although entirely innocent, have stood a fair chance of being condemned.

The object of all trials is, of course, the discovery of the truth, as far as our fallible means of reaching it will allow. And surely there can be no more efficient mode of arriving at it than to have whatever may be said on each of the

two opposite sides of a disputed question exhaustively stated and urged by a practised advocate. If, at the worst, craft and cunning are exercised by one party, they may be met and counteracted by similar tactics on the other; and a monopoly of skill is thus avoided. There can be no deception, so far as the Bar is concerned, in the matter; we are never supposed to utter our own individual sentiments in any case. We are engaged to say for our clients that which they would say for themselves, if they had had the training and experience we have gone through. The following incident will serve to illustrate the principles by which we are bound:—

Many years ago, a young barrister at the Maidstone Quarter Sessions was retained to defend a man charged with *stealing*. After the evidence for the prosecution was at an end, my learned friend contended that the offence proved, if any, was that of *receiving* stolen goods, and not that of *stealing* them, and he claimed an acquittal for his client on that ground, and, as the law then stood, he would have been entitled to it if his reasoning was correct. The chairman took the same view of the evidence as he did, and directed an acquittal; but, in order that justice might not be defeated, he ordered the prisoner to be detained in custody until the assizes, which would be held

within the next fortnight, and that in the meantime a bill charging him with feloniously *receiving* stolen goods should be preferred. The case came on in due course before one of the judges of assize, and the same counsel defended the accused; but having before contended that the evidence proved a guilty *receiving*, he now insisted quite as strenuously that the same evidence proved a *stealing* and not a *receiving*, and that, if convicted at all, he ought to have been found guilty on the former occasion. Singularly enough, the learned judge was of the same opinion, and the prisoner was again acquitted, and was at once discharged, as he, of course, could not be tried again for the same offence.

The young barrister I have referred to is at this moment a judge of the Superior Court, and I venture to assert that a more honourable and high-minded one never occupied the judgment-seat. He has, too, hereditary claims to consideration, which, even if his own eminent qualities were not sufficient for the purpose, would be certain to insure him respect.

I happened to be seated next to him at a dinner given by the Kent Sessions to one of our learned brethren, who had obtained promotion, and the chairman alluded playfully by way of compliment to this little incident in the judge's early career.

He made a graceful acknowledgment of the truth of the allegation, and I do not believe that any of us thought the worse of him for what some people might deem, paltering with justice in a double sense.

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## CHAPTER IX.

### SIR WILLIAM MAULE.

Sir William Maule—His Witty and Humorous Sayings—A Great Novel-Reader—Deafness a Common Weakness among Judges—Anecdotes of Maule—An Action for Slander—Charnock—The 'Umbrella Case'—Charnock's Smartness—A Coiner in the Dock—Maule on Divorce—A Forcible Bit of Satire—Crowder—Maule and Baron Parke.

For dry, pungent, unpretending wit and humour, no celebrity in my time could compare with Sir William Maule, judge of the Common Pleas. His good things poured from him, without the slightest effort, and without even an apparent consciousness that he was uttering anything beyond the most commonplace observations pertaining to the matter before him; and, whilst those who listened to him were convulsed with laughter, he pursued the even tenor of his way, without the least vestige of a smile upon his placid countenance.

As I knew him he was somewhat old, and appeared physically worn out, but his mind seemed at all times as bright and vigorous as ever. He was very much afflicted with asthma,

and always appeared to have great difficulty in breathing. He very frequently wore a respirator in court, through which he sometimes painfully gasped out his words in a way that excited the pity, though often the risibility, of all who listened to him, for he was ever courteous and kind.

He was seldom seen out of court, for it was rumoured that he invariably went to bed at its rising, and never got out of it till it was time to prepare for work the next morning. Meantime he was said to devote himself entirely to novel reading, for he declared that there was nothing so well calculated to air the mind as a good novel.

In trying a case he never seemed to take any interest in the proceeding, nor even to pay the slightest attention to it, while he languidly wrote down the evidence as it was given; but a startling remark made by him every now and then showed that he was acutely alive to what was going forward. In a case tried before him, the details of the evidence were such as not to be quite adapted to the ears of the other sex, and the usual announcement was made that all females must leave the court. Shortly afterwards, the examining counsel, glancing round the assembly, suddenly stopped. Maule turned to him,

and, merely by a look, for he did not utter a word, seemed to inquire why he did not continue his examination.

'My lord,' said the learned gentleman, 'I find that your order has not been attended to, for I see that females are still present.'

'I do not agree with your interpretation of the order,' said the judge. 'I have always understood its meaning to be, that all *modest* females must quit the court, and, as far as my judgment goes, the order has been most strictly complied with. I at first thought you might be afraid that my morals might be affected by my listening to these questionable details; but you may make yourself quite easy on that score, and may safely proceed.'

He was a little deaf, a complaint which is very prevalent amongst judges who have been long upon the Bench. It may perhaps arise from the necessarily inordinate exercise of the sense of hearing; or it may be from the change of focus, as it were, instinctively carried on in the mechanism of the ear, from the great variety, in compass, of the voices they are constantly listening to.

The only occasion on which Maule showed any irritation was when a witness persisted in speaking in a low tone of voice, which it was difficult for him to catch. He once said to a witness wh

would go on mumbling, after being frequently remonstrated with,

'Witness, for the sake of God and your expenses, do speak out.'

Under similar circumstances—still in reference to the mumbler's expenses—he remarked,

'Witness, if you do not speak louder, I shall have to teach you the difference between *aloud* and *disallowed*.'

He once said: 'People talk about a man and his wife being one. It is all nonsense; I do not believe that, under the most favourable circumstances, they can be considered less than two. For instance, if a man murders his wife, did ever anybody hear of his having committed suicide?'

A little girl was in the witness-box, and as is usual, before she was allowed to be sworn, she was examined by the judge as to her understanding the nature of an oath, and her belief in a future state.

'Do you know what an oath is, my child?' said Maule.

'Yes, sir, I am obliged to tell the truth.'

'And, if you do always tell the truth, where will you go to when you die?'

'Up to Heaven, sir.'

'And what will become of you, if you tell lies?'

'I shall go down to the naughty place, sir.'

'Are you quite sure of that?'

'Yes, sir, quite sure.'

'Let her be sworn,' said Maule. 'It is quite clear she knows a great deal more than I do.'

Here is one of his quaint remarks, not made, however, when he was on the Bench:

'I have often thought,' he said, 'that there can be no place of punishment for sinners after death; but then, my mind has turned to some of my particular friends, and I have become convinced that, if there were none, there ought to be.'

A witness who had given his evidence in such a way as satisfied everybody in court that he was committing perjury, being cautioned by the judge, said at last,

'My Lord, you may believe me or not, but I have stated not a word that is false, for I have been wedded to truth from my infancy.'

'Yes, sir,' said Maule, 'but the question is how long you have been a widower.'

To some person in the witness-box, who had given a statement which created considerable surprise throughout the court, he said,

'Well, sir, you seem to be a respectable man, and so I suppose I am bound to believe you; but I can only say that, if I had seen with my own eyes what you describe, I should hesitate to believe it. The truth is that, by the time

man has had six months' experience as a judge, he is ready to put faith in everything and in nothing.'

He was well aware of his superiority of intellect as well as of his knowledge of law, compared with some of the judges with whom he was associated, and his frolicsome disposition, sedate and subdued as he always appeared to be, frequently impelled him to poke a little fun at his brethren if a fair opportunity offered. There was a case pending in his court (the Common Pleas) in which the plaintiff had recovered large damages, notwithstanding he had shown himself when under cross-examination to be not over and above honest in dealing with the defendant; he had inveigled him by cunning and cajolery—not, however, as certain precedents laid down amounting to actual fraud—into making the contract sued upon. A new trial was accordingly moved for, but the court was compelled, by virtue of the authorities cited, to refuse it. Chief Justice Jervis, in giving judgment for the plaintiff, expressed himself in terms of violent indignation at the disgraceful and dishonest conduct he had resorted to in deceiving the defendant, and deeply lamented that, as the law stood, the court had no power to deal with him as he deserved. When it came to Maule's turn to give his opinion, he said,

'I entirely agree with the decision my lord has

come to; the only difference between us is that, in arriving at it, I cannot bring myself to exhibit the emotion he has displayed. I, too, am sorry that we are obliged to give judgment for the plaintiff, but I don't see why I should put myself out about the matter. There are so many anomalies in the law, and so many fraudulent people in the world, that a newly-discovered specimen of either gives me no uneasiness, nor does it produce in me the least excitement. But my lord is younger than I am. When he has reached my age he will cease to give way to that virtuous indignation —perhaps I ought rather to say that generous enthusiasm—by which he seems oppressed.'

Nothing would restrain him, if an out-of-the-way notion came into his head, especially if it was a satirical one. On a question of costs comin before him, he remarked:

'This seems to me quite a novel application. am asked to declare what amounts to this, that, i an action by A against B, C, who seems to hav less to do with the case than even I have, ough to pay the costs. I do not believe that any suc absurd law has ever been laid down—although, i is true, I have not yet seen the last number of th Queen's Bench reports.'

He was trying once a man charged with an assault upon a female. The defence set up was

consent on the part of the prosecutrix, and Maule soon made up his mind that there was abundant ground for it; but it was a question for the jury, although in summing-up he pretty clearly indicated to them his opinion as to the course they ought to take. But, as often happens when an interesting young specimen of the other sex is concerned, juries are apt to wink at little foibles, which they would not tolerate in their own. In this instance they seemed for a long time very reluctant to adopt the judge's view; but he generally got his own way, and, having interposed with two or three sarcastic remarks during their deliberations, they at length acquitted the prisoner; whom Maule addressed in these words:

'Let me, my man, give you a bit of advice. The next time you indulge in these unseemly familiarities, I recommend you to insist on your accomplice giving her consent in writing, and take care that she puts her signature to the document, otherwise, it seems to me, you may get before a jury who will be satisfied with nothing else.'

Again, in sentencing a woman for keeping a disreputable and disorderly house, he began by saying,

'It is a pity you cannot carry on your profession in a business-like respectable way, as people in other professions do.'

As I have said, he was generally patient and forbearing, and he seldom interfered with counsel in their mode of laying cases before a jury or the Bench; but once he was fairly provoked to do so by the confused, blundering way in which one of them was trying to instil a notion of what he meant into the minds of the jury.

'I am sorry to interfere, Mr. ——,' said the judge, 'but do you not think that, by introducing a little order into your narrative, you might possibly render yourself a trifle more intelligible? It may be my fault that I cannot follow you; I know that my brain is getting old and dilapidated, but I should like to stipulate for some sort of order. There are plenty of them. There is the chronological, the botanical, the metaphysical, the geographical—even the alphabetical order would be better than no order at all.'

I doubt whether anyone could thoroughly appreciate these queer sayings without having heard the simple, subdued, almost humble and apologetic way in which they were uttered.

An action was brought by an attorney against a defendant for calling him a thief, a rogue, and a *fiend;* and, as the plaintiff had no proof of any pecuniary special damage, he had to rely on the injury that must necessarily be inflicted on him in his professional capacity by such imputations.

In summing up, Maule said,

'As to the word thief, it is a very ambiguous one, and does not necessarily impute what the law considers an indictable offence. For instance, to steal a man's wife, to steal away the affections of another, to steal a march upon anyone, would be no crime in law. Wives, human affections, and such things as marches are not at present the subjects of larceny. Rogue is different; it might certainly affect the plaintiff professionally, because a rogue ought not to be allowed to practise as an attorney. But the same principle does not apply to the term *fiend;* it may not be a complimentary expression, but I do not think to be a fiend disqualifies a man from being an attorney. If the learned counsel will point out to me any case where the court has refused an application to place a fiend upon the rolls, I shall be happy to consider it.'

He was fond of devilry, and his allusions to the topic were frequent, as the last and the following references to it will show. He had a greater horror of the western circuit and its practitioners. They had long enjoyed the credit of being the most wordy, long-winded members of the profession, and Maule professed a great dislike for the dull, prosy longitude of their speeches. He said he was obliged once to take that circuit,

and soon learned the truth of the saying that the wise men came from the east. He certainly always shirked the western when he could manage it, and remarked,

'I do not know what my ultimate destination may be, but I am determined not to rush into purgatory before my time.'

He tried a case in which an attorney brought an action against a former client for his bill of costs. The bill had been taxed and the amount fixed, and it was evident that the judge thought the case should have been treated as an undefended one; but the counsel for the defendant, thinking that attorneys were fair game to be run down before a jury, dwelt with much virulence on the extravagance of the charges. He said the bill was exorbitant and fraudulent; he might, in fact, call it a diabolical bill. He was evidently not acquainted with the judge with whom he had to deal.

Maule told the jury he differed from the learned counsel in thinking the items either fraudulent or exorbitant.

'It has been taxed,' he said, 'by those who know better than any of us what is fair and proper, and that, in the absence of fraud, is generally looked upon as conclusive. As to its being a diabolical bill,' he continued, 'I can give no

judicial opinion. The learned counsel probably understands the application of the term better than I do, and I will assume that he is correct in his description; but, if so, it seems to me only the more incumbent upon you to give the devil his due, and to find a verdict for the plaintiff for the full amount he claims.'

And the jury at once, with an assenting smile, did so.

There was on the home circuit and the Surrey Sessions a barrister named Charnock, a man very original in his way, very shrewd, and singularly successful as a defender of prisoners, especially where the cases seemed desperate. He probably, by his efforts, set a greater number of guilty criminals free to prey again upon their species than any other member of the Bar. It was a sort of rough-and-tumble business with him, for he cared little what others might think of his suggestions, however reckless and absurd, if he could see that they found favour in the jury-box. When he had really anything to say, he was not particularly noted for his artistic mode of saying it; but, when he had nothing to say, no one could say it better. His peculiar method lay in drawing off the attention of the jury from the important points of the case, and fixing it upon what was perfectly immaterial. and. when he thought

he had fairly succeeded in his mystifying project, he left the judge to neutralise the impression as he best could.

There was a noted case of this kind, which we all long remembered as the 'Umbrella Case.' It was tried at Maidstone, before Justice Coleridge, on a fine day in July. The evidence was as clear and conclusive against the prisoner as evidence could be, and no one but Charnock could have deemed that he had the slightest chance of escape; but our friend was never cowed by any such despairing views. There were several witnesses, all concurring in establishing guilt; but, singularly enough, each of them appeared in the witness-box carrying in his hand a large gingham umbrella. This circumstance Charnock made his *point d'appui*. He cross-examined the first that came as to why he had brought an umbrella with him on so fine a day. He could not expect rain, or that the sun would damage the complexion of so hardy a fellow as he seemed to be. After a little more banter of this kind, the judge interrupted, and said,

'But, Mr. Charnock, what has all this to do with the case?'

'Oh, my lord,' was the reply, 'you will find it of considerable importance before the trial is over.'

The judge was obliged to submit. A second and a third witness came forward, each supported by a stalwart umbrella, and the same process was gone through of questioning them as to why they brought them.

'Surely, Mr. Charnock,' said the judge, 'this is trifling with the court and jury.'

'My lord,' was the answer, 'you know enough of me to be satisfied that I never ask irrelevant questions.'

This, of course, caused a general titter from the Bar. The judge, however, did not join in it, but leaned back in his seat, with a look of despairing resignation upon his countenance.

'You will, my lord, presently see my object,' continued Charnock.

After he had treated every witness in the same fashion, he addressed the jury, urging upon them that there was much more in this umbrella business than might at first sight appear. The article the witnesses carried with them so persistently was only useful in the keeping off rain or a broiling sun, and there was little prospect of either on a day like that. The joint resolve to carry umbrellas showed that there must be conspiracy among them for some ulterior purpose; and that could only be the conviction of his unfortunate client. He went on in this strain for some time,

amusing the jury with some stale jokes; and, when he had concluded, the judge shortly summed-up—too shortly perhaps, under the circumstances. He possessed a reasoning and logical mind, and could hardly conceive that any set of men could be influenced by such absurd topics as those which the learned counsel had exclusively dealt with. He contented himself with merely glancing at the preposterous character of the defence, and then laid before the jury the salient parts of the evidence that were material; and, as he hinted, conclusive, as establishing the prisoner's guilt. But the counsel had already made his mark—which the address of the judge failed to obliterate—and the jury acquitted the accused, to the surprise of the whole assemblage in court.

Charnock not only at all times sought to put himself on a level with the jury, but also with the prisoner he was defending, with whom he identified himself, by invariably, in speaking of him, using the pronoun 'we.' I heard him once say, when he was attempting to prove an alibi,

'Gentlemen, I will prove to you that it is impossible *we* could have committed this offence; for I will call before you the very man that *we* were in bed with at the time alleged by the witness, and at a place twenty miles away from the scene of action.'

But the rough, common sense of Justice Maule, and his singular adroitness in detecting fallacies, always proved a stumbling-block to Charnock, whenever he tried to practise his little artifices before him; and he used bitterly to complain that he never could steal a verdict from the jury when that wily old judge presided.

At Maidstone, a case came before Justice Maule in which the prisoner was charged with coining, and Charnock defended. The counterfeit coin, when produced, turned out to be a very bungling, awkward piece of workmanship, and the counsel at the close of the case for the prosecution took the piece of metal in his hand, looked at it contemptuously, and contended that it was absurd to suppose that such a thing as that was ever intended to represent the current coin of the realm. It might be meant to betoken anything or nothing. None but idiots could ever be deceived by accepting it as genuine money, and the legislature was too wise to pass laws simply for the protection of idiots. After a good deal of such comment, delivered in his usual jaunty style, the judge summed up. He began by highly complimenting the counsel for his very able defence. He had laid down the law to them with perfect accuracy, viz., that the coin alleged to be counter-

feit must be intended to represent the current coin of the realm.

'I will only observe,' he continued, 'what he did not much enlarge upon, that the intent is everything; the result is not so material. It is your duty to pay every regard to what the learned counsel has urged, for it is well worthy your attention. Examine what has been called "a thing" for yourselves. You will remark that it has the Queen's head on one side and the royal arms on the other. You have been told that it may betoken anything or nothing. Well, if you think on examination it was meant to represent say—a milestone, a box of dominoes, or a pair of snuffers, you will adopt the learned counsel's view, and acquit the prisoner; but if in spite of its rude, clumsy execution it was still *intended* to represent current coin, you will find him guilty.'

I need scarcely add that Charnock scored nothing by his defence.

One of Justice Maule's most noted escapades is to be found in his address to a prisoner who had been convicted before him of bigamy. The speech—I can scarcely call it a judicial sentence—created a great sensation, for it was a clever and satirical attack upon the law of divorce as it then existed. I know that it was printed and fully discussed in many of the journals and periodicals

of the day; but I may be pardoned for reproducing it here, as it may well be beyond the ken of many people of the present generation. I do not profess to give what the judge said word for word, but I think I am not far wrong even on that score in giving the following version as a tolerably authentic one:—

He said: 'Prisoner at the Bar, you have been convicted before me of what the law regards as a very grave and serious offence, that of going through the marriage ceremony a second time while your wife was still alive. You plead in mitigation of your conduct that she was given to dissipation and drunkenness, that she proved herself a curse to your household while she remained mistress of it, and that she had latterly deserted you; but I am not permitted to recognize any such plea. You had entered into a solemn engagement to take her for better, for worse, and if you got infinitely more of the latter, as you appear to have done, it was your duty patiently to submit. You say you took another person to be your wife because you were left with several young children, who required the care and protection of some one who might act as a substitute for the parent who had deserted them; but the law makes no allowances for bigamists with large families. Had you taken the other female to live

with you as your concubine, you would never have been interfered with by the law. But your crime consists in having—to use your own language—preferred to make an honest woman of her. Another of your irrational excuses is, that your wife had committed adultery, and so you thought you were relieved from treating her with any further consideration; but you were mistaken. The law, in its wisdom, points out a means by which you might rid yourself from further association with a woman who had dishonoured you; but you did not think proper to adopt it. I will tell you what that process is. You ought first to have brought an action against your wife's seducer, if you could discover him; that might have cost you money, and you say you are a poor working man, but that is not the fault of the law. You would then be obliged to prove by evidence your wife's criminality in a court of justice, and thus obtain a verdict with damages against the defendant, who was not unlikely to turn out to be a pauper. But so jealous is the law (which you ought to be aware is the perfection of reason) of the sanctity of the marriage tie, that in accomplishing all this you would only have fulfilled the lighter portion of your duty. You must then have gone, with your verdict in your hand, and petitioned the

House of Lords for a divorce. It would cost you, perhaps, five or six hundred pounds, and you do not seem to be worth as many pence. But it is the boast of the law that it is impartial, and makes no difference between the rich and the poor. The wealthiest man in the kingdom would have had to pay no less than that sum for the same luxury; so that you would have no reason to complain. You would, of course, have to prove your case over again, and at the end of a year, or possibly two, you might obtain a decree which would enable you legally to do what you have thought proper to do without it. You have thus wilfully rejected the boon the legislature offered you, and it is my duty to pass upon you such sentence as I think your offence deserves, and that sentence is, that you be imprisoned for *one day;* and, inasmuch as the present assize is three days old, the result is that you will be immediately discharged.'

It was generally believed that this forcible bit of satire was mainly instrumental in procuring a change in the law, and the establishment of the Divorce Court on its present basis.

I have mentioned Justice Maule's aversion to the western circuit on account of the prolixity and diffuseness of speech developed in several of its members. If any prejudice exists against it now,

it is rather caused by the length of the journeyings to and fro, than by the length of the harangues.

Crowder (afterwards a judge) was, in his younger days, rather noted for his copious and redundant rhetoric. A juryman was once rebuked by the judge for having fallen asleep during one of the learned counsel's exuberant efforts. He said, by way of excuse,

'My lord, I can teak a dose o' Crowder as well as any man, but I must teak it yearly in mornin', when I am fresh, and vit for any queer business that may tourn up.'

I remember, about the year 1851, it was generally rumoured amongst us that Crowder was to be the next solicitor or attorney-general, but we afterwards understood that he had lost his chance by his timidity and want of confidence in himself. The tale ran that the ministry required a speech to be made (I think it was on the Greek question) by some member of position in the House of Commons, and that Crowder having become somewhat prominent there was requested to make it; but he was of a quiet, retiring temperament, and he declined. Application was then made to Cockburn, who, it was said, seized the opportunity with alacrity. *He* had no fear of failure, and had longed for an opportunity of distinguish-

ing himself. He performed his allotted task, and acquitted himself so admirably that admission to office speedily followed, and he eventually became Lord Chief Justice of England. Of my experience of him in that character I may hereafter have occasion to speak.

Crowder was a remarkably handsome man, and turned out to be an excellent, painstaking, amiable judge, always urbane and courteous, whether on or off the Bench.

As a pendant to my remarks on the repute attached to the western circuit for lengthy speeches, I may state that Baron Parke once said to Maule:

'I am going the western this time, Maule, and I will make those long-winded fellows shorter, or I will know the reason why.'

'Quite right,' said Maule, 'but, by the time you get back, Parke, you will have learned the reason why.'

## CHAPTER X.

### SAMUEL WARREN.

Samuel Warren—His Vanity—Prince Albert as a Plaintiff—Sir Henry Davison—Lord and Lady Lyndhurst—Davison's Joke at Warren's Expense—Warren appointed Recorder of Hull—Charles Dickens—Thesiger's Wit—Warren's Serenity—Scott, the Reporter of Common Pleas Cases—Warren is led to Confess the Authorship of his Novels.

THERE never was a member of the Bar who contributed so much amusement to his friends—and he would have afforded much more to his enemies, had he had any—than Samuel Warren, the author of 'Ten Thousand a Year' and of 'The Diary of a Late Physician.' That he was a man of considerable genius is abundantly shown by the works I have mentioned, and yet he was always offering himself as an unresisting butt to the gibes and jeers of his acquaintance. He was a singular compound of simplicity and artfulness; the latter attribute, however, was of the most harmless character, for it was never calculated to take anybody in. It consisted in a never-ending desire to convince mankind that—gifted as he undoubtedly was

—he held a much more prominent position in the world's regard than nature ever intended he should do. He seemed to think that society in general spent all its spare time in thinking of him, and admiring his productions. But he was really looked upon by everybody as a very good fellow, kind and amiable in his demeanour, and taking the jokes that were frequently played upon him in very good part. He was never known to speak an ill-word of anyone; but, after all, this may be but negative praise, according to my brother Ballantine; for I heard him once say, in his usual caustic style, when a similar character was given of another member of the Bar,

'There is no credit due to him for that; he is so incessantly occupied in talking of himself that he has no time left for slandering other people.'

But Warren's nature was not aggressive; and it may be truly said that, while he was universally laughed at, he was universally liked. His only fault was an uncontrollable, overweening vanity; but this, it is to be hoped, he sufficiently expiated by the penance of ridicule and humiliation, of which he was so constant as well as conscious a victim. It was quite immaterial to him whether the laurels he sought to gain came from the highest or the very lowest sources.

A friend once told him in jest that he understood he wrote the poetic advertisements that Moses and Sons, the celebrated tailors, used to put forth in the public journals.

'No,' said Warren, 'they offered me very handsome terms to undertake it, but I did not think it consistent with my position in the literary world to accept the offer.'

No one believed that any such proposal had ever been made; he merely wished to have it supposed that his talents were in universal request. Unfortunately for his friends, he was retained as counsel in the well-known case of Prince Albert *v.* Strange, in which the prince sought an injunction against the defendant, for pirating certain designs which were executed for his private use.

I say 'unfortunately,' because, for months after this retainer, no sentence was ever uttered by Warren in which His Royal Highness's name did not flourish, together with expressions of gratitude to his illustrious patron for the marked confidence he had reposed in him. As to Prince Albert having had anything to do with the selection, was, with us, rather apocryphal; and, after all, there was not much to boast of, seeing that he had two leaders over him, and was therefore only third in the legal team; but he had not the

slightest misgiving as to the distinction being due to royal admiration of his immortal works.

One afternoon he received a call from Davison, afterwards Sir Henry, who went out to India as judge. His friend found him with a huge pile of papers before him, which were always in the same position when anyone called. He roused himself and soon began to talk about the important case to which he was devoting all his energies. Such attention was due to the distinguished client who had conferred such honour upon him, that he meant to be unfailing in his endeavours to promote the success of the cause. Nothing could be more flattering than his position; but it involved great labour, for he could find not a moment's time for exercise or recreation.

'In fact, we ought to dine,' he said, 'to-night, with Lord and Lady Lyndhurst, but I have been obliged to refuse, on conscientious grounds.'

'Oh,' said Davison, 'I am invited too, and am going to dine with his lordship. I will mention that I have found you overwhelmed with work.'

'I would rather you did not name the subject,' said Warren, 'my wife has already sent an excuse to Lady Lyndhurst.'

'Nonsense,' said Davison. 'I shall be able to confirm her statement of your inability to attend.'

'You will oblige me by saying nothing about

it,' was the answer. 'Your statement might clash with the excuse my wife has given, and I am not aware of what she wrote.'

But his friend was not to be persuaded from the task of tendering apologies for the overwhelmed counsel to the noble lord.

Warren, finding at length that Davison was obdurate, was obliged to confess that he was only joking, and that he had received no invitation to dine with Lord Lyndhurst.

'Neither have I,' said Davison, 'I was joking too.'

Having some doubt of the truth of the tale that had got abroad, I asked Davison whether it was well founded, and he assured me that the conversation had occurred as I have related it.

I recollect meeting Warren once in Paris at the *table d'hôte* of the Hotel des Princes, in the Rue Richelieu, an establishment long since closed. It was just after he had been appointed Recorder of Hull, about the year 1853. He was seated, not immediately opposite me, but a little way further up or down the table. This gave him the opportunity of addressing me in a tone of voice that could be heard by everyone present, and was exactly suited to his wishes. He confided to me the fact that he had just received a lucrative appointment as *judge*, one of the best of the kind

in the gift of the government; that he had already held a session; that on his arrival at Hull, the mayor and aldermen had come out in state to meet him, and escort him to the town-hall; and that in the evening a banquet was given in his honour.

'In truth,' he said, 'if Prince Albert himself had been there—and I may say that His Royal Highness is one of my clients—he could not have been treated with more deference and respect. I can only suppose that the compliment was paid me in consequence of my being the author of "Ten Thousand a Year."'

No one at the table knew him probably, except myself, and he must have been aware that it was quite unnecessary to tell all this to me, as I was, of course, well acquainted with the main facts, independently of the circumstance that I had heard them from him before, with all their interesting embellishments. I was in this case simply a dumb medium of communication to others.

Having exhausted the above topics, he favoured us with the statement that Charles Dickens had, the week before, given a dinner in his honour, at which all the literati of the day and many noble and distinguished guests were invited to meet him—among the rest the Duke of Devonshire. I

could not help thinking, though perhaps uncharitably, that it was much more likely that he had been invited among others to meet the duke, than that the duke had been invited to meet him. Of course I said nothing, but left the assembled company to form what notion they pleased of my learned friend. He was always boasting of his intimacy with members of the peerage, and one day he was saying that, while dining lately at the Duke of Leeds', he was surprised at finding no fish of any kind was served.

'That is easily accounted for,' said Thesiger—'they had probably eaten it all upstairs.'

He was much annoyed by being introduced once at a fashionable assembly in Paris as Monsieur Vaurien. The accentuation of the syllables was unmistakable, but whether the servant had been made the accessory to a foolish joke, or whether it was the nearest approach he could make to the Gallic pronunciation of the name, I am not conscious.

It is remarkable that, in spite of the frequency of the sneers and buffetings, he received them with perfect calmness and serenity. It might almost be supposed that his great object in life was to afford scope for fresh ones.

He was telling a friend that, on entering a ballroom in Liverpool with a lady upon his arm, all

eyes were turned upon him with a sort of flattering gaze that made him feel quite nervous. I may state that the lady who accompanied him was the wife of one of the members of the northern circuit, and remarkably handsome, as indeed she still is, although many years have passed over her since that time. The friend bluntly suggested that possibly the lady might have been the cynosure, and not himself; but Warren repelled the idea with indignation. He well knew from experience the point to which general admiration was tending, and could not be mistaken.

Sometimes he would boast of the honours universally paid him; on other occasions he would affect to despise them, and complain of the irksomeness of so marked a career as his. He once met our very learned friend Scott, the reporter of Common Pleas cases, at the top of Inner Temple Lane, and, as they were going in the same direction, they walked away arm-in-arm together. Scott noticed that his companion often cast his eyes over his shoulder, but could not tell why. At length Warren said,

'You know not what it is, Scott, to have a reputation like mine, but it carries its own annoyances with it. You are charmed at first with the homage you receive, but the pleasure soon palls upon you, and you begin to discover that it is

not very agreeable to be continually stared at, and your lightest words continually watched for and listened to. I frequently find in walking with a friend in the street that people come close to me for the purpose of hearing my conversation. For instance, there is a young fellow immediately behind us who has been following at my heels ever since we left the Temple; when I turn, he turns, and when I stop, he stops. He is one of the nuisances I speak of.'

Scott took a glance round, and immediately said,

'Ah! Warren, that is my son; he is rather bashful, and has been keeping near, so that when you had done with me, we might walk home together.'

At first Warren wished to preserve an *incognito* as to his authorship, not so much perhaps with a view to emulate Sir Walter Scott as from fear that the disclosure of his name might interfere with his professional prospects. He would have been satisfied with keeping the world at large in ignorance of his literary enterprise, but for any individual to usurp a credit which was all his own was beyond his powers of toleration. He always denied the paternity of the works in question, but he did it in a half-hearted way that was well calculated to arouse suspicion, for the struggle

between his esteem and his supposed interest was a severe one.

A malicious friend, who well knew his tendencies and disposition, and who had made a shrewd guess at the truth, took an effectual method of solving the difficulty. Talking together of the subject of the authorship of the volumes that had excited so much interest, Warren affected to be quite as much puzzled as his companion as to who could have written them. The latter observed, after a pause,

'Warren, I know I can trust you with a secret which I would not disclose to anyone else; but, as an old friend, I will rely on you. I am, then, the real author of the works in question.'

This was too much for Warren. His countenance suddenly assumed a blue tint, and in a tone of anger he said,

'You are uttering a scandalous falsehood. It was I who wrote every line of them.'

'That is all I wanted to know,' said his friend, with a smile. 'You have convinced me of what I had long suspected.'

There was no longer any secret about the matter, and I do not think that Warren much regretted that it was so.

I must confess that I have been rather free in describing and illustrating Warren's peculiarities;

but it must be remembered that, if he was to be referred to at all, it would be impossible to pass by the most prominent and dominating features of his character. And, moreover, I am persuaded that he would have much preferred that his weaknesses should be even openly paraded than that his name should be altogether omitted from any record of the Bar.

## CHAPTER XI.

### A SHORT CHAPTER.

Sir Nicholas Conyngham Tindal—Lord Tenterden—Anecdote—A Roaring Barrister—Sir Mordaunt Wells—Sir John Campbell—Baron Gurney.

THOSE who remember Sir Nicholas Conyngham Tindal, Chief Justice of the Common Pleas, will bear me out in saying that, while few judges bore a higher reputation for a thorough knowledge of law, not one could show greater kindness, courtesy, and benignity than he invariably displayed. His cotemporary, Lord Tenterden, Chief Justice of the King's Bench—who, however, only survived Tindal's elevation for two or three years—was of a very different temperament, and was said by those who had practised before him to have been morose, surly, and uniformly ill-tempered. He was the son of a hair-dresser at Canterbury, and, I believe, a singing boy in the choir of the cathedral. When he attained eminence, it may be mentioned to his credit that he did not contrive to forget early associations; for he bears,

as an addition to his arms, a crozier on a canton, in the dexter corner of the shield—alluding, I presume, to his youthful connection with the cathedral of his birth-place. He died before I entered the Temple, but I had frequently seen him presiding in his court, and remember that I did not much admire either his appearance or his manners. I have heard or read somewhere that, when dining on one occasion at the banquet at Guildhall, the Lord Mayor, in proposing his health, said, in the course of his speech,

'You see, in Lord Tenterden and myself, how the poorest and meanest of His Majesty's subjects may rise to the very highest honours by diligence and good conduct. We come from the very dregs of the people, and yet we are filling two of the highest offices in the state. He is Chief Justice of England, and I am Lord Mayor of London.'

Probably it was the same alderman who thought 'S.P.Q.R.,' ('Senatus populus que Romanus') meant small profits and quick returns.

I had not very much experience of Chief Justice Tindal, for he left the Bench in 1846; but what I did see of him made me much regret his loss to the profession. He was the very embodiment of kindness, and it was manifested indiscriminately to all classes of persons with whom he had to

deal. I was once present when, having pronounced sentence of death on a prisoner convicted of murder (I think his name was Blakesley), it was necessary to call the convict back, after a slight interval, on account of some trifling informality in pronouncing the sentence. The judge, in a voice tremulous with emotion, feelingly apologised to the man for adding to his distress by subjecting him again to the public gaze. Although he seldom indulged in observations beyond the scope of his official duty, there was at times a touch of humour about him that made us regret it was not more frequently displayed.

There was, on the western circuit, a learned serjeant (he died before I became one) who was noted for the most stentorian voice and the most boisterous demeanour. The Chief Justice was once asked whether he considered Serjeant B—— to be a *sound* lawyer.

'I must suspend my judgment,' was the answer, 'until it is authoritatively decided whether roaring in a horse constitutes unsoundness or not.'

At a town on circuit, where the civil and criminal courts were a considerable distance apart, Tindal who was presiding in one of them, observed,

'I have not seen my brother B—— in court

during the last two days. Does anyone know where he is?'

'Oh, yes, my lord,' said one of the Bar. 'He is now speaking in the other court.'

'Then I am afraid I am growing a little deaf,' said the chief; 'for I do not hear him.'

This reminds me of an incident of somewhat the same kind, that has reference to another possessor of the coif, Sir Mordaunt Wells, who was long my cotemporary. He, too, was gifted with a lung power which, when he got a little excited, he was in the habit of putting forth with great zeal and energy. He was one day defending a prisoner in the Criminal Court, which was closely adjacent to the civil one. A judge (I think it was Baron Huddleston) was trying a case in the latter, and found that the business was very much disturbed by the noisy, clamorous tones that emanated from the rival establishment. At length he could submit to it no longer, and he despatched a message to his learned brother, with his compliments, and he would be much obliged to him if he would content himself with addressing one jury at a time.

When the courts were sitting, Chief Justice Tindal used to ride to and fro on a horse to which he was much attached, and which had carried him steadily and safely for many years. But

these years had told on both horse and rider, and the latter was frequently advised by his friends to change the animal for one younger and more reliable; for, however good the equine will might be, his bodily strength might fail in carrying so very weighty a man as the judge.* But his lordship went ambling on, quite neglecting their suggestions. Now it happened just at this time, as was well known, that Sir John Campbell, then Attorney-General, had a very strong desire to obtain the Chief Justiceship of the Common Pleas whenever the present incumbent should vacate it,—whether voluntarily or perforce was, in his acute mind, perfectly immaterial. The judge used often to relate a conversation he had with the Attorney-General, which I will give as nearly as possible as he told it.

'I was one day,' he said, 'gently riding in the park, when Jock Commell' (as he always called himself) 'rode up to me, and we jogged on together side by side for some distance. After a little common-place talk, he cast a look of admiration on my poor steed, and said, "I have always envied you the possession of that horse of yours,

*He was of very considerable dimensions, and I remember a caricature of the period representing him towering above Justice Williams, who was very diminutive, and who always went by the name of 'Little Johnny.' They were standing side by side, and beneath were inscribed the words, 'Judges of A'Size.'

Chief Justice. He seems so firm and sure-footed." But he is getting rather old, I observed. "Age is nothing," he replied, "it only confirms an animal in his good habits. If I were you, I should not part with him on any account. He will carry you with perfect safety for years yet." I pondered over Jock's words when we separated, and,' he continued, with a smile on his venerable face, 'I parted with my poor beast to a friend, a light-weight, who I knew would take care of him, the very next day.'

The Chief Justice differed in most respects from another cotemporary, Baron Gurney, who was considered very snappish to counsel and very severe to criminals. It was commonly said amongst us, though I do not mean to vouch for the truth of the report, that he was never seen to shed a tear but once, and that was when on a visit to the theatre to witness the performance of the 'Beggar's Opera,' it was announced on the stage that Macheath had been reprieved.

# CHAPTER XII.

## BEARDS AND DRESS.

Beard and Moustache—Wearing Them a Dreadful Offence Formerly—Solemn Inquiry on the Subject—'Soup'—Ladies Favour Beard and Moustache—Beard and Moustache come into Fashion among Barristers with the Volunteer Movement—Judges still Refuse to Wear Them—Beards in the Reign of Queen Elizabeth—A Ghastly Barber—Wig and Gown—Fashion in Dress—At the Queen's Drawing-Room—Anecdote—Hair Powder—Anecdote.

When one reflects upon the hirsute physiognomies of so many members of the Bar at the present time, it seems remarkable that for very many years anterior to about 1860 A.D. scarcely a beard and certainly not even the downy symptom of a moustache was to be seen on the face of any practising barrister; but still more would people be surprised to learn that somewhere between thirty and forty years ago a member of the profession was actually ostracised by his companions for presuming to carry such an appendage to his features. Yet such is the fact. There was a quiet, gentlemanly, well-informed man, named Brierley, who used to attend the Central Criminal

Court, and who wore a long flowing beard and a thick moustache, which seem to have given offence to some of the leaders who regularly frequented the sessions. He was past middle-life, was very inoffensive, and could have excited no jealousy, for he never had any business, and never seemed to expect any. His aspirations appeared to be confined to an occasional spoonful of 'soup' from the official tureen.* His delinquency consisted solely in wearing hair upon his chin and upper lip. A meeting of the senior Bar was called, to which he was summoned. None but ocular proof was, of course, required, and he was called upon for his defence. He seemed quite to recognize the enormity of his crime, for instead

* It is necessary, perhaps, that I should explain to the uninitiated what 'soup' means, for it was a very important word in the vocabulary of juniors, and was constantly on their lips. Some of them lived upon it, at least as far as professional gain was concerned; but at the best it must have been a somewhat spare and ungenerous diet. When no counsel appeared for the prosecution, a judge would often ask some barrister present to conduct it, for which he would receive a fee of one or two guineas, paid by the county. At the sessions a brief was given in every such case, and was handed to the Bar in rotation according to standing. Every man would therefore know the time when his turn would probably be reached; and I have known many learned counsel who now sit in high places come up to town from distant parts that they might be partakers of soup and appear in public, although the cost of the journey far exceeded the value of the fee. The brief consisted merely of the depositions, and the important honorarium attached to it was called '*soup*.' It was amusing sometimes to see how eagerly the tureen was watched, and in my younger days I have often watched it myself with deep interest.

or denying the jurisdiction of the tribunal that was to judge him, and contesting its right to interfere with his personal toilette, he proceeded to apologise, and to excuse himself on the ground that he had a serious affection of the throat, and that it was under strong and urgent medical advice, that he was induced to transgress the unwritten ordinances of the Bar.

One would have supposed that this excuse would have been sufficient to disarm hostility and insure his acquittal, but it turned out otherwise, and a vote of censure was, by a small majority, passed upon him, for subjecting the Bar to general ridicule by his extravagant physiognomy. This was the worst that could befall him, for of course he could not be prevented from coming within the sacred precincts of the court, nor from taking his seat at the Bar-table. The only means of carrying out the resolution was by [redacted] Coventry. But he did not give sending him to [redacted] of executing it, for he them the opportuni[redacted]s. I never heard what seldom appeared afterward[redacted] and well-conducted a became of this a[redacted] amiable[redacted]ut I remember that gentleman as I ever met; [redacted]xcited a great deal the high-handed proceeding e[redacted]male adjuncts of of anger on the part of the [redacted]part against him, those who had taken a strong[redacted] them had rather and it was remarked that some of [redacted]

a bad time of it at home for weeks afterwards.

That half the Bar appear now in court bearded and moustached is due probably to the martial ardour with which it was seized, on the introduction of the volunteer movement; for it seems to have been thought as necessary to furnish the upper lip of a soldier with hair, as it was derogatory to a barrister to submit to the same process. The double calling, military and forensic, appears to have introduced a contradictory element into the question; but the passionate love of freedom that is now so rampant throughout the world, soon settled the matter. The innovation was at first tolerated, and finally received full judicial, as well as barristerial sanction. As far as my observation goes, it has not yet invaded the Bench. But the change will come—indeed, what change will not?

It is difficult to trace when the barefaced appearance of the forensic portion of the community commenced, for certainly, up to the end of the seventeenth century, our legal ancestors always appear by their portraits to have had the lower part of their faces covered and concealed as nature probably intended it should be, for nothing that is natural in the human physique ought to be taken to be a disfigurement, and the marked distinction between the sexes in this particular,

must be assumed to be a palpable indication of design.

A decree went forth in the reign of Queen Elizabeth, that no barrister should appear in court with a beard of more than a fortnight's growth. It is not easy to understand how such a regulation could be enforced, unless the Bar were subjected to some strict and periodical inspection. Had the rule applied to length of hair, instead of length of time, there would have been no difficulty in the matter. But we know nothing as to whether the decree was ever acted upon.

Connected with the subject of beards, I recollect T——, a member of the northern circuit, and a Q.C., told me of an incident that occurred to himself, and which may be worth mentioning. He awoke one morning at his lodgings at Liverpool, having dined with a jovial party at mess the night before, and found he had a slight touch of headache, while his hand was not quite so steady as usual. Something had disagreed with him, possibly the salmon, for it is astonishing how much this delicate and delinquent fish has to answer for on such occasions. He had to be in court by ten o'clock, and it was necessary he should be shaved. In his then nervous condition, he did not quite fancy performing this operation himself, so he sallied forth to the first barber's shop he came to, and the

ceremony began. He noticed that the shaver was very cadaverous and looked very ill; but what struck him more was that his wife kept close to him at the time, and fixed her eyes stedfastly on his face. However, the business was satisfactorily got through; and my friend, not having any smaller money, gave the man half-a-crown to get change.

While the latter was away, T—— asked the wife about her husband's pallid condition, and how it was that she gazed so stedfastly at him during the time he was operating.

'Yes, sir,' she said, 'he has been seriously ill for a long time; he only came out of a lunatic asylum last night.'

T—— said he was so staggered that he literally ran out of the shop to get his breath, without waiting for his change, and began to think that there would have been less risk in trusting his throat to his own manipulation than to that of a stranger.

The general costume of the Bench and the Bar has changed perhaps much less than that of the population at large, especially as far as head-gear is concerned. The public have been beguiled into numerous changes by the tyranny and caprice of fashion; the Bar have been constant to the original garb. They have continued to adopt the out

ward indicia of their status, just as they adhered for centuries to the ancient and crude form of special pleading. So that, eccentric as we may look now in our antiquated accoutrements, it was the common dress in former times, and men of a certain class would have appeared ridiculous in any other.

The wig or peruke was invented by the courtiers of Louis XIV., in order that they might appear with the fine flowing locks which nature had bestowed on the head of their monarch; and, when these began to grow scant, he followed the example of his subjects, and wore a wig too. The fashion was adopted by the Court of Charles II., and when all who thought themselves respectable did the same. The Bench and the Bar, deeming themselves of course in that category, followed the mode, to which they have adhered ever since, whilst others have discarded it. Whatever style of dress was formerly worn by the upper classes is sure to linger somewhere, although perhaps in a modified form.

If we stroll into the park on a drawing-room day, and look upon the coachmen and footmen of the higher nobility, we find them decked out in various coloured silk, satin or velvet coats, richly embroidered waistcoats, silk stockings and cocked hats. Now this is precisely the costume worn by

gentlemen a hundred years ago. On a similar principle, now in vogue among ourselves, a waiter at a dance or an assembly is often assumed to be a guest, and addressed as such. All this may have become a very harmless custom, well understood; but it doubtless arose from the affectation of having it supposed that we were waited upon and served by persons of a higher class than menials. Thus a noble lord's bedizened lacquey of to-day is, to all appearance, the well-bred gentleman of a former age; and the modern waiter, as we know him now, represents the like individual of the present one.

At the beginning of our Queen's reign, and for some years afterwards, Westminster Hall on Her Majesty's birthday used to present a very gay and lively scene. The dignitaries of the law, who were going to attend the drawing-room at two o'clock, and who had to transact their business beforehand in the law courts, appeared in full court dress, full bottomed wigs, gowns of figured damask silk, and with lace bands and ruffles. I remember Thesiger telling us that his bands alone cost a hundred pounds, and were presented to him by a lady friend. But all such displays as the above have long been discontinued. Since Her Majesty's lamented bereavement, the shows

and festivities of the birthday have been naturally much curtailed.

It was the Duc d'Orleans in the time of the French Revolution, with his motto of 'Liberté, Egalité, Fraternité,' that put an end to this absurd fashion of men dressing in silks and satins, and enabled them to go about in society like rational beings, at least as far as outward appearance went, although it must be confessed that the present costume is not very picturesque. Now, it is often difficult to distinguish by the eye an ancient peer from a respectable mechanic.

It is told of a nobleman—whom I have often seen dressed like an under butler, in a black suit, swallow-tailed coat, and a white cravat, while white cotton stockings were peering above his shoes—that he went into a shop to buy a pair of gloves. After selecting a pair, he asked the price.

'Well,' said the shop-keeper, 'if they are for your master, four bob, but if they are for yourself, two bob and a bender,' which I understand means two shillings and sixpence.

Hair powder was worn in the seventeenth and eighteenth centuries by most people above the rank of artisans. In the seventeenth it was necessary for the dressing of wigs; in the latter part of the eighteenth it was worn independently. But the

custom was pretty well destroyed by Pitt, who, wishing to make it a source of revenue, put a tax on the heads to which it was applied. The opposition were resolved that the minister's anticipations should not be realised, so they determined to render it unproductive, by ceasing to use it; the public followed suit, and the fashion soon died out. Now, it only does service to two distinguished classes of the Queen's subjects: the Bench and Bar who wear wigs, and the footmen of the aristocracy who do not. Many of the former, however, have ceased to avail themselves of it, and prefer wigs, the hair of which requires no powder to aid their attractions.

I have not included the bishops in connection with the subject of hair powder, because wigs are, I believe, scarcely ever worn by them in these days, although, in my early ones, a bishop was seldom seen without one, except by his valet.

A train of thought on one subject often arouses a kindred reminiscence of another. Dwelling on costume, calls to my mind a good thing which appeared in *Punch*—in one, I think, of its very early issues. It impressed me very much at the time, and is almost comparable with that inimitable one: 'Advice to people about to marry.' There was a picture of a stalwart Life-Guardsman dressed in his handsome, picturesque trappings,

parading up and down at the entrance to St. James' Park, while two ragged young crossing-sweepers, without shoes or stockings, were resting on their brooms, contemplating him with looks of admiration not perhaps unmixed with envy—when one little urchin says to the other,

'I say, Jim, that's the way our money goes.'

One other quotation from *Punch*, and I promise to plagiarise no more—that is to say, intentionally. It affords one of the most beautiful illustrations of child-like simplicity I ever met with. A mother is lying upon a sofa, while her little girl is fondling and admiring her. The child exclaims,

'How pretty and good you are, mamma!—how glad I am that you married into our family!'

Such gems as these should render the cutters and polishers of them immortal.

I always feel a sort of regard for a man who tells me a good story. There was an acquaintance of mine at the Bar for whom I had no great liking; he seemed to me, as we are often in the habit of saying of one another, 'that there appeared to be nothing in him.' He told me of a schoolmaster who had a row of boys arranged before him that he might examine them in the matter of cleanliness. Each boy was told to hold out his right hand, and in the first few the master

did not find any blemishes that called for special attention. At last he came to one that seemed to try his patience.

'Now,' said he, 'if I find a dirtier hand than that in the school, I will forgive you.'

'Lor', sir,' said the boy, 'will you—there!' and he immediately stretched out his other hand, which seemed as if it had recently indulged in close familiarities with the coal-scuttle.

I should have been ready to strangle the pedagogue had he punished the grimy delinquent after that; for, independently of the joke, he would have clearly broken a special contract by so doing. I felt a sort of respect ever afterwards for the man who told me that tale.

## CHAPTER XIII.

### SIR WILLIAM FOLLETT.

Sir William Follett—His Appearance and Qualifications—Senseless Litigation—Follett's clever Speech—An aspiring Junior—What is Truth?—The Object of Life—Is Mankind growing Better?—Follett and Maule—Anecdote of Maule.

I HAD not many opportunities of gaining experience of Sir William Follett, for he died prematurely in 1845, and, during many intervals before that time, he was obliged to cease from work, and to go abroad for the benefit of his health, which was always delicate; but I saw and heard quite enough of him to know that he was one of the ablest men that ever appeared at the English Bar. I seldom lost an opportunity of being in court when he was engaged in a case, and was always struck with his great powers of reasoning and the peculiar style of the advocacy that he adopted—or rather, I should say, the only one adapted to his nature. He was no orator, in the ordinary acceptation of the term; he could scarcely be called eloquent, for there were in his harangues

no flowers of speech, no flights of fancy, none of those insidious efforts of illustration which, while suggesting a pretended analogy, are only meant to draw off the attention of the hearer from the real question in dispute. There was neither action nor passion about him. His manner was essentially conversational. He stood before those whom he addressed, calm and impassive; there was scarcely a gesture that could distinguish his effort from a mere colloquial discussion; it was a pure appeal to the reason and judgment of those whom he sought to persuade. Yet he was very impressive, and he seemed to compel you to listen to him, probably because you could always follow and always understand him. He was tall, and his presence was commanding, while he was ever modest and deferential in his delivery and demeanour. It was remarkable what wonderful effects he produced by what, to a superficial observer, might appear such very slender means.

It was once said that, whilst it was the object of a true scholar to make profound things clear, that of a German philosopher was to make clear things profound. Follett furnished a powerful confirmation of the former part of the apothegm, for he could invest the most craggy and indigestible topic with an interest that astonished those

who contemplated it in its naked deformity, and gladly shunned it in consequence.

I remember hearing him argue a case in the Bail Court, when I, as a student, was seated in what was called then the students' box, on the left of the judicial bench. Justice Williams ('Little Johnny') was the judge, and, although at least fifty years have elapsed since that time, so strong was the impression made upon me by Follett's exhibition of power that the whole scene, with the appearance and countenances of the various performers, are as vividly before me at this moment as if that which I am relating occurred but yesterday. The case was one upon the law of settlement under the poor-law, as technical and unpalatable a topic as can well be conceived. It consisted of the most minute and trifling details of the pauper's birth, parentage, and marriage, or that of his parents, his dwelling, and the rent he paid. Such were the material facts, with many others of the like sportive kind, that required consideration, and the most trifling variation of proof in any of these particulars might make all the difference in the result of the case. As to the law, it was scattered through many statutes, and the decisions upon it through many volumes—the various sections of the one and the inconsistencies of the others it was the business

of the judges to interpret and to reconcile. Nearly all this anomalous state of things has been very properly abolished.

Two parishes, perhaps two or three hundred miles apart, would often spend a hundred pounds or more each in litigating the question of whether or not an aged pauper was settled in one or the other, when five shillings a week would probably have fully sufficed to support the subject of the controversy for the few years he had to live. I should not have been so well pleased, perhaps, at an earlier period of my career if that condition of affairs had been non-existent; for it was a source of very considerable emolument to me while I was at the Surrey Sessions. But we see things in a different light at different stages of our existence.

It is necessary to give the foregoing explanation in order that my remarks on the case in question may be properly understood.

Hall, of the northern circuit (afterwards M.P. for Leeds), was on one side, and Follett on the other. The former began. He was of burly form, a good lawyer, clever, but somewhat heavy in more senses of the word than one. He talked on for an hour; and, with such materials, it is no disparagement to him to say that his argument was not diverting. Not one individual in a hundred, unless he had ulterior views, would have

probably endured it. For myself, I may say that at that time I knew nothing of the poor-law, and that was as much as I wished to know; for I was not disposed to take up a repulsive branch of the law, that I then deemed might never be of any use to me. I waited for Follett, for I had had already some experience of his power. At length he began, and my attention was at once riveted. I followed him sentence by sentence, and it seemed as if I had a map of the argument before me. I could trace every step of the journey; each following the other in consequential order. I could realise every movement—the spot from which he had emerged last to—as it seemed to me—the one he was about to approach next. There was no break in the connection; nothing that required explanation; and, in the end, I flattered myself I knew as much of that particular part of the law of settlement (for there were many of them) as he did himself—or rather, I should say, as much as he wished or intended should be entertained of it by those who heard him; for, be it understood, he could probably have argued on the other side with just as much apparent frankness and conviction as he exhibited upon the present one.

But, as I have said before in an earlier part of these recollections, his province was not to

discover the truth. He was a professed actor, like Irving or Wilson Barrett on the stage: no one believes either to be really Hamlet or Othello, although he appears in the garb, and uses the language attributed to those dramatic heroes. Follett was doing his duty, in obedience to the behests of an institution which rendered it just, as well as expedient, that he should be substituted for his client, in urging the latter's legal claims before the court, whatever might be thought of their morality. That was a question for the legislature, not for him.

It is no exaggeration to say that I was fascinated with Follett's speech on the occasion in question. He seemed to me to be a giant amongst men.

There was a heavy case in which he was engaged in the full court of Queen's Bench. I do not remember hearing what it was about, nor is it necessary for my purpose that I should. At the commencement of Sir William's argument, all the judges seemed to have set their minds strongly against him; but this, so far from discouraging him—as it usually did with most other counsel—only appeared to increase his determination to convert them to his side of the question, if he possibly could. He proceeded to urge his points, and, after a time, he began to have hopes.

They were evidently wavering; for they one by one uttered remarks that told him he was making way. At length, when he had reason to believe that he had fully succeeded, he sat down. But with him, was an aspiring junior, who, wishing to distinguish himself in so important a case, against the expostulations of his leader, insisted on being heard. And, accordingly, he was heard, at considerable length. At the close of his efforts to acquire distinction, he found he had succeeded, but not quite in the way he had hoped for.

The Chief Justice said, addressing Follett:

'We are deeply indebted, Sir William, to your junior—more so, perhaps, than I can express—for preventing our going astray, as we were very likely to have done; for we had almost settled in our own minds that we should decide in your favour; but the able argument that has been addressed to us just now by Mr. H—— has saved us from doing what, he has shown us, would be an act of great injustice to your opponents. We must therefore give judgment against you.'

It is unfortunate for the interests of the public, as well as for the advance of our system of jurisprudence, that Sir William Follett did not survive to become a judge, in which capacity he would have been certain to achieve the very highest rank. He would then have had the disposition

and, no doubt, the opportunity of devoting himself exclusively to an investigation of the actual truth instead of being, like the driver of a public vehicle, obliged to go wheresoever his employer chose to direct him. The comparison suggests no disparagement of our profession. We act as promoters of the truth, if, individually, we do not always seem to seek it. It might be jeopardized, if counsel were heard only on one side of a case; but, where there are two strenuously opposed to one another, it is difficult to conceive a more efficient mode of eliciting the truth. We might be compared to the severed halves of a pair of shears, each adapted to nothing, except mischief—but together, though always acting in collision, they form a most convenient implement of labour.

It is true that superior skill on the part of one of the counsel may sometimes depress the scale in a wrong direction, but this is a risk that is trifling and must necessarily be run; besides which, the tribunal that is to decide may be, in general, trusted to detect the erroneous variation, and readjust the machinery. It may be fairly assumed that, to whatever mental occupation Follett had devoted himself, he must have risen to eminence, and I do not know how he could have rendered himself more useful than by preparing the faculties

of his mind for the judgment-seat; and nothing is better calculated to produce that result than a lengthened training at the Bar.

I have alluded to the investigation of the truth, but after all—what is truth? Two judges, of great and equal intellect, will often differ on the interpretation of a statute, or draw different conclusions with regard to precisely the same body of evidence, simply because individual parts of them create diverse impressions on their minds. This is very natural, and far from being infrequent. Where then is the truth, and how is it to be evolved? Practically the question is decided by men inferior to the two who have differed, by each siding with one or the other of these, as his judgment or his conscience dictates and this dec[illegible]

we come to spiritual things, it is sheer waste of time to speculate upon them, or at least to seek to go beyond what has been revealed to us. Those who believe in revelation have always at hand a happy, and what they confidently assume to be an authoritative, solution of many of the difficulties that might otherwise beset them. Those who do not so believe—and it is strictly a matter of evidence—have no such criterion. They must needs remain in their pristine darkness. They will in vain seek to induce the world to take the creations of their own puny intellects as a substitute for the light which they have chosen, even though conscientiously, to reject. There have always been, and always will be, men in the world who utter a great deal of jargon about the finite

[redacted]ow-

on what has been evolved out of their own mental consciousness. There is obviously much relating to ourselves, and to our ultimate destination, that we were never intended to know anything about, just as the truth is kept from the poor lamb that he will probably be killed and cooked for dinner, and eaten with mint sauce.

We may naturally suppose that we are meant to fulfil a higher destiny than the lively little quadruped that 'licks the hand just raised to shed its blood.' The moment of its enlightenment is that of its annihilation, and it certainly would not have frisked a jot more gleefully if it had gleaned the intelligence at an earlier period of its existence. Think what would be the effect on a man's mind, of his being certified of the successive vicissitudes of his career, even in this world. Every sentiment, every feeling would become paralysed; there would be no incentive to exertion. Hope, that great vivifier of the human spirit, would have fled from him, for he was already foredoomed, and it would be useless and profitless to struggle against Fate. But there are some inquisitive and presumptuous people who think they ought to know, and also that they can learn more about supreme destiny than we know at present. Most of us, however, get on pretty well with the several versions of the knowledge that we have achieved

for ourselves, together with what the generality of men are satisfied has been vouchsafed to us. It is quite useless our asking for more. We may just as well seek to learn the ancient history of the inhabitants of the moon, when it had any, or what class of beings will dwell in Jupiter or Saturn when they become in a condition to sustain animal life. We have no fulcrum upon which the lever of thought can rest—no material on which it can be brought to operate.

Follett was a great man, but his intellect was only great by comparison. If we degrade omniscience by assuming it to be represented by so low a figure as 1,000, we should be complimenting Follett by representing his capacity by 4, and that of ordinary clever men by 3. How paltry and insignificant must appear the attempt by smaller minds to reach beyond the limits prescribed to one of the ablest and brightest of our race. Follett was too wise to have employed his time in such speculative enterprises; and, had he given himself up to them, the world would have derived little profit from the result.

It may be presumption to say so, but it has often occurred to me in moments of abstraction as probable, that one object the Deity had in peopling the earth with human beings was that they might exhaust their researches into the laws of

Nature, and bring their knowledge of them to perfection, and that when such knowledge was arrived at their mission would be accomplished. I think that there is some evidence to justify this conclusion; and that the inquiry is not beyond the scope of the limited intelligence with which mankind is gifted.

In the first place, I assume it may be taken for granted that part of the scheme at least is, that the human race should make progress, and show increase of power in some direction or another. What evidence, then, have we of any such advance?

I doubt whether we have any proof that mankind in the present day have much improved in mere morals. Since Adam and Eve were created, men have been as prone to be disobedient to divine as well as to human command as they ever were, and women have still about them many of the characteristics of their original maternal parent. We all have in greater or less proportion the same passions, the same dominant impulses. Education may have done something to modify our apparent status in this respect; but it has taught us—and especially for our own selfish convenience—rather to conceal than to control our evil propensities.

Turning now to mental power, I cannot think

there is any increase in that particular. I question whether the present generation has any reason to credit itself with superiority, in pure abstract inventive intellect, over the ancient Greeks, and we have scarcely any records of nations antecedent to them on which to form a judgment. But in knowledge of the secrets of Nature—that is, in estimating acquired qualifications as distinguished from natural gifts—there can be no doubt we have made wonderful progress, and have far outstepped our forefathers. That this should be so is obvious and inevitable, since the discoveries of our era must necessarily become the heritage of its successor; and thus a mass of knowledge has been ever accumulating for future generations to improve upon. The present century has made larger contributions to mechanical art and science and to the discovery of what, though now familiar to us, had hitherto been considered impossibilities, than the half-dozen centuries that preceded it combined. Advance in this respect, therefore, cannot be denied, and it must have been designed; for whatever is, it is clear, was intended to be. But I will not pursue this topic further. I was led into it by the remarkable genius of the man whose characteristics I have been discussing, and whose life

was cut short before it had reached its highest stage of usefulness.

There must be many men living who knew much more about Sir William Follett than I can profess to do; but, as far as my personal observation carries me, in mere intellectual power I never knew him surpassed.

I had almost forgotten to record a little colloquy that took place between Follett and Maule when the latter was at the Bar. It will afford an idea of the estimation in which he held those who were placed in authority over him. There was a very important and intricate case coming on in the House of Lords, and the peers had summoned the judges to attend them to hear the subject-matter argued by counsel and to give their opinions upon it. Follett was retained as counsel on one side and Maule on the other. Shortly before the case came on, Follett strolled into the kitchen of the House of Commons (to which the Bar had always access in the day-time) and called for a biscuit and a glass of sherry. To his surprise, he saw Maule sitting at a table with a rump-steak and a huge flagon of stout before him, to the consumption of both of which he was applying himself with the most exemplary assiduity. Follett could not help expressing to his

opponent his astonishment at seeing him indulging in so solid and carnal a diet by way of a preparative for the task he was about to enter upon, and for which a clear unclouded brain was so essential.

'As to clearness of brain,' said Maule, 'I find that mine is too clear already. The truth is, I am striving to bring my intellect down to a level with the capacity of those idiotic judges.'

Possibly he had no serious meaning in what he said. But he could never restrain himself from giving utterance to anything sharp and pithy whenever the opportunity presented itself.

## CHAPTER XIV.

### MR. BENJAMIN, Q.C.

Mr. Judah Benjamin—His stormy Career—He quits America—Is Called to the English Bar—His Qualifications—He Practices for Seventeen Years—His Retirement—A Banquet in his Honour—Nearing his End—Monsieur Berryer—Lord Selborne—Lord Brougham—A Barrister's duty to his Client—Lord Chief Justice Cockburn's opinion on the Subject.

To my mind the nearest approach to Sir William Follett in his power of close, abstract reasoning was the late Mr. Judah Benjamin, whose career had been a stirring and a startling one. He was born in America, and his strongly-marked Jewish features sufficiently indicated the faith of his forefathers. He was educated for the law, and, when he commenced practice in the Southern States, his talents soon brought him into prominent notice, and eventually raised him to distinction. In the War of Secession, he sided with the South, and became Attorney-General, and afterwards Secretary of State, under Jefferson Davis, and was throughout one of the most trusted advisers of his chief. But after the victory of the

North, and the utter defeat of his party, he with difficulty made his escape from America, leaving all his property, including a valuable library, behind him. The greater part of the former he never recovered, but the library was purchased by the subscriptions of many of his friends and admirers, and presented to him on his arrival in England. This took place in 1865, and he immediately entered Lincoln's Inn and applied himself vigorously to the study of our law. Through the instrumentality and good offices of Lord Cairns, he was called to the English Bar in 1866, after one year's probation, a concession most generously, though exceptionally, accorded to one who had gone through so many interesting and romantic vicissitudes of fortune.

It is difficult to imagine a position more apparently hopeless than his. At the comparatively advanced age of fifty-five, he had to adapt himself to an entirely new state of things. He had a great deal to learn, and, what was almost as trying, a great deal to unlearn; for, although the law in the United States is founded on ours, time has caused a considerable divergence between them, and the technicalities of practice vary still more. He had to contend against the *élite* of the English Bar—men who had established a long-standing connection with attorneys, and were not

easily to be displaced by a new-comer of whom little was generally known.

I am bound also to mention that Benjamin's appearance was far from prepossessing; he was short and stout—in fact, what the irreverent might call stumpy, and his voice had about it what we are in the habit of deeming the very worst of American twangs. There was nothing in his gait or bearing that could compare with the dignity of aspect which characterised Sir William Follett, for instance, and many other leaders. If I refer to these difficulties and defects, it is only for the purpose of suggesting how powerful must have been the energy and the intellect that could defy and surmount them all.

Benjamin was singularly amiable and sympathetic in his association with others, and showed an amount of retiring diffidence and modesty that would scarcely be expected in one who had been an actor in so many exciting scenes of conflict and turmoil. But, notwithstanding the drawbacks I have referred to, he rapidly rose to the very highest rank in the profession. He was able at length to choose the class of business for which he would accept retainers and reject every other, however remunerative it might promise to be. He soon gave up attending to *nisi prius* cases—that is, trials before a jury. It must be confessed

that for these his style and manner, and I may say his faculties, were not well-adapted. I doubt whether he could have invested a dry, uncouth, vapid collection of facts with the charm of a romance, and thus have secured the rapt attention of a superficial auditory. This, I think, marked the distinction between his powers and those of Sir William Follett.

Benjamin's faculties were more logical than descriptive. He could twist and play with his major and his minor premisses with great skill, so as to bring them in harmony with his conclusion, but he could not reduce his mind to a level with those speciosities which it is often necessary to resort to in order to squeeze out a verdict from a jury. Johnson said of Milton he could carve a giant out of a rock, but he could not condescend to carve heads out of cherry-stones. Benjamin's were not perhaps what might be called all-round faculties, but at least they were sharp, keen, and incisive. His practice was latterly principally confined to cases in the privy council and the House of Lords, and he is said to have made the largest income of any counsel of his time. He retired from the Bar in 1883, so that all his successes were gained within a period of seventeen years, much of the early time having been employed in learning to achieve them. A dinner

was given to him on his retirement by the judges and the Bar in the hall of the Inner Temple, my old and esteemed friend Sir Henry James, the then Attorney-General, being in the chair. On no occasion within my recollection (except one, to which I may shortly refer) has a banquet been so numerously attended. The hall was as full of guests as its space would accommodate, and scarcely an existing dignitary of the profession was absent.

A cynic might suggest that the Bar, at least, were glad to commemorate the departure of so formidable a competitor from amongst them; but no one who knew the sentiments entertained by the profession towards Benjamin would think so.

In spite of his great talents (so speedily recognized) no feelings of jealousy were ever manifested by those who would be most likely to suffer by his advance. The right hand of fellowship was always extended to him from the first, and the banquet was a just tribute to the regard and affection we all felt towards him.

He came from Paris, his favourite dwelling-place, to receive the compliments we all wished to pay him, and, in responding to the proposal of his health, it was quite clear that our good wishes would not be available for any length of time. He had become very enfeebled, and looked

wasted and ill. He poured forth his thanks in feeling and tender words for the generosity and uniform kindness with which the Bar had received a destitute fugitive from another land; one who had nothing but his misfortunes to recommend him to their sympathy. It was a touching scene, and rendered more so by the feeling which most of us had of the painful event that could not long be delayed.

I have been enabled to record but little regarding poor Benjamin. I have often witnessed and heard of many of his triumphs in court, but I have never heard of his ever having perpetrated a joke. The truth is, his mind was too big, too much occupied with more solid matter to indulge in such pastime.

The other dinner I have referred to above was that given in 1864 by the Bench and Bar to Monsieur Berryer, the head of the French Bar of Advocates. It was held in the Middle Temple hall, which was crowded to excess, very many of the profession being excluded for want of space. The occasion was in itself a very interesting one, but it was rendered more so by the distinguished men who attended it, many of whom will be long remembered in history. The Attorney-General, Sir Roundell Palmer, now Lord Selborne, presided, and to the right and left of

him were, besides the principal guest, Monsieur Desmarest his batonnier (meaning, I believe, his deputy), Lord Brougham, Lord Kingsdown, Mr. Gladstone (claiming legal status as Chancellor of the Exchequer), Chief Justice Cockburn, Sir Fitzroy Kelly, Lord Justice Knight-Bruce, Vice-Chancellor Wood, Lord Hatherley, Baron Bramwell, Justice Blackburn, and all the remaining judges, with the leaders and seniors of the Bar. Berryer made a fine speech, but, in the opinion of most of us, the address of the batonnier was the more interesting of the two. But the evening was rendered memorable by some remarks of Chief Justice Cockburn, that have been often quoted since, as to the duties an English advocate owes his client. I have touched on this subject more than once, and have stated what, in my judgment, those duties are.

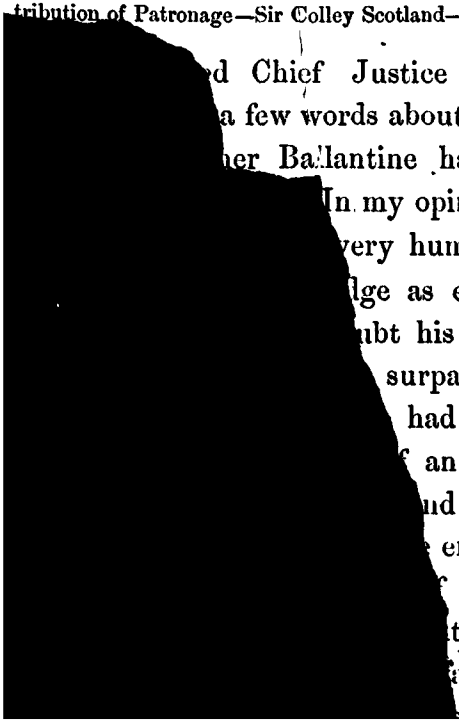
Lord Brougham, in a published work, had laid down what was generally thought to be somewhat extravagant views upon the subject. I have not the words before me, but, in effect, they amounted to this—that a barrister should be prepared to sacrifice his country, his family, and his home in advocating the cause of his clients. In delivering a speech on the evening in question, he expatiated in somewhat the same strain, and insisted that it was incumbent on counsel to

subordinate almost every other consideration to that of ensuring success to those who retained him. Chief Justice Cockburn, who spoke afterwards, took occasion, in the course of his remarks, to advert to what Lord Brougham had published as well as spoken. He agreed with much that had been urged with reference to the duties of a barrister. He was bound to exercise all his talent, all his energy in behalf of his client; but there were boundaries that he ought not to permit himself to transgress. He was bound to act like a man of honour. He ought not unfairly to traduce the character of others in order to benefit his cause—thus to extract a verdict *per fas eut nefas.* 'He is,' he continued, 'entitled to use the weapons of a warrior, but not those of an assassin.' Reiterated cheers followed this remark from all parts of the hall, and I have always thought it was specially intended as a protest against the doctrine that Lord Brougham had, years before, laid down, and which seems never before to have been so openly challenged.

# CHAPTER XV.

## LORDS COCKBURN AND CAMPBELL.

Lord Chief Justice Cockburn—Serjeant Ballantine's opinion of Him—Cockburn's Fairness—Demeanour of the Bench towards the Bar—Cockburn's Amiability—Lord Campbell—Envious of Lord Brougham—Edwin James—Lord Blackburn—The distribution of Patronage—Sir Colley Scotland—Lord Lyndhurst.



d Chief Justice Cockburn, I
a few words about him, because
ner Ballantine has done him
In my opinion—making
very human frailties—
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surpassed by some
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approached. Of course we can only speak of a man according to our experience of his attributes. But it sometimes happens that a fancied slight to ourselves, an unintentional wound to our feelings, a false rumour supposed to have emanated from the object of our criticism (perhaps a true one would be still more resented) may taint our judgment, and induce us to express an opinion entirely opposed to that generally entertained.

I speak of Lord Chief Justice Cockburn only with reference to his bearing as a judge in relation to the Bar, and as he appeared [illegible] society; I cannot pretend to u[illegible] regard to his private life. I[illegible] carried to the Bench the habit[illegible] at the Bar, and that h[illegible] judiced view of a case [illegible] it was very difficult a[illegible] change. I believe I[illegible] Cockburn on the Be[illegible] the impression left [illegible] very last man who[illegible] such a charge. [illegible] against Chief Ju[illegible] might have b[illegible] being entirely [illegible] much more int[illegible] was with Cock[illegible]

for whom I had a more affectionate regard. But there is no doubt that he leaned too much to the equitable in contradistinction to the legal side of a question. It was a fault in a judge, but it was to some extent a venial one, for he abhorred injustice in any shape, and always sought to prevent the technicalities of the law from interfering with what he considered the moral rights and just claims of a party to a suit.

I have certainly witnessed instances in which Cockburn has taken what might appear to be a prejudiced view of a particular side in a case in court, but I have constantly known him change that view as the evidence proceeded, until in the end he virtually confessed his error by summing-up in favour of the party against whom his first impressions were formed. Indeed I should have thought that a readiness to admit unfounded preconceptions and the frankness with which the admission was made, would have been generally recognised as a peculiar characteristic of the Chief Justice; and it is not a trait that is frequently met with in a judge. He does not like to admit that he has been unduly biased, and would rather run the risk of its not being detected than that he himself should openly proclaim the fact. There is, however, but seldom cause of complaint in this respect.

The demeanour of the Bench towards the Bar, especially towards the junior Bar, is of much more concern to the public than may at first sight appear, or than is generally imagined. A client is entitled to the fullest exercise of the talents of the advocate he has chosen to represent him; but this he cannot have, if the latter is not allowed to feel perfectly at ease in the pursuit of his vocation, his mental powers unchecked by unseemly interruptions, captious, ill-natured remarks, or superciliousness of manner exhibited by the judge before whom he is arguing.

A neophyte half-known and not yet half-appreciated is very easily disconcerted, and, when subjected to such treatment as I have referred to, what might have turned out to be a very valuable argument, had it been patiently listened to, remains unspoken, or at least deprived of much of its force and clearness; and thus, not only the client, but possibly the science of jurisprudence, sustains considerable loss.

No one can tell except he who has experienced it the value of an encouraging smile from a presiding judge to a junior just struggling into professional existence; whereas nothing can have a more paralysing effect upon the faculties than a rude assumption of superiority of intellect or knowledge that I have sometimes, though I admit

rarely, seen. No one could show more amiability and kindness to juniors than Sir Alexander Cockburn.

I have often known him when a harsh or impatient word has been uttered by one of his brethren in a full court to a young man arguing his case before them, address him in terms of encouragement, and assure him that he was listening attentively to what he was saying, and thoroughly appreciated his argument. I must add that after all he was somewhat of an autocrat in his court, and was always strict in exacting the utmost deference and respect towards the Bench. He was not one with whom it would be safe to take liberties, and the only instance I remember of such an attempt being passed over without reproof, is the one I have related in my notice of our nervous and facetious friend Tom Jones.

Cockburn could be severe and caustic enough towards those who ventured to show airs before him, or to manifest their independence of the moderate code of deportment he rightly prescribed; but those who were willing to render it a strict adherence never found a more genial or pleasing court to practice in than his. Nor was his geniality confined to his duties on the Bench. At Serjeants' Inn, he would occasionally remain with us

serjeants after the other judges had left, and there we always found him a most charming companion, full of anecdote and just as ready to listen to what any of us had to say, as to amuse us with his own racy recollections of times gone by.

What a wonderful contrast there was between his character and that of Lord Campbell, his immediate predecessor as Chief of the Queen's Bench. The one all manliness and openness—the disposition of the other made up of subserviency and self-seeking.

I have already given an account of the equestrian interview between Campbell and Chief Justice Tindal, and it most faithfully pourtrays the leading principle of his life. If volumes were written to explain the natural tendencies of his character, they could not give a more complete and accurate description of him than may be gleaned from that unsophisticated anecdote told by the venerable Chief Justice of the Common Pleas. He seems to have manifested an early determination of 'getting on' by any ways or means, from the moment of leaving the paternal roof to the close of a constantly advancing career. He hated Lord Brougham, and it is amusing to read the obsequious letters he wrote to that functionary and the contemptuous tone of the latter's replies; but no treatment, however repulsive, would pre-

vent Campbell from humbling himself again whenever he thought anything was to be gained by humility. He died in the middle of the night, and it was very currently believed that unless the arch enemy had watched his opportunity and attacked his victim while he was asleep, he would have managed to elude his usually irresistible grasp. He had few friends; but I think it must be admitted that he became an able and most useful judge when upon the Bench, and scarcely any fault was to be found with his decisions. He kept men to the point, and saved much valuable time by seizing upon the real and vital elements of a case, and by never allowing counsel to travel beyond them. The Bar had seldom any reason to complain of his behaviour towards them, for he was in general very tolerant and civil; but we always thought that a display of courtesy which was indigenous in Cockburn was a matter of calculation with Campbell. It was a principle with him never to make enemies, except of those who came in the way of his advancement, and these were enemies rather of necessity than of choice. The only occasions on which he ever showed signs of temper was when counsel would persevere in interpolating into a case what he thought had nothing to do with the real question to be tried. I remember Edwin James once say-

ing to him while folding up his brief, after a long struggle in furtherance of such an attempt,

'I will retire, my lord, and no longer trespass on your lordship's impatience.

I hope I have done Lord Campbell no injustice in thus stating my impression of his character; and I say so, because I feel bound to aver that setting aside history and hearsay, and judging from my own individual experience—and I saw a great deal of him on the Bench—I should have little reason for carping at the way in which he conducted the business of the court. True, he was sometimes a little peevish and irritable, but he was an old man, and I believe I was then more disposed to find excuses for the testiness of old age than I am now. The faults he was charged with, justifiably or otherwise, were internal and not external. Any display of the latter would only have prejudiced the hoped-for success of the former. But I, of course, heard his character much discussed by those who had very much better means of forming a correct opinion of him than I had, and I may say that the view I have expressed was the one almost universally entertained.

It was most unfortunate for Campbell that such a feeling was abroad; for it resulted in the very worst construction being put upon everything he

either said or did, and craft was supposed to actuate every effort of his mind. By virtue of his office, or by his influence, two judicial appointments were made, which excited the keenest and most rancorous comments. The present Lord Blackburn was the recipient of one of them, and the most ridiculous personal motives were attributed to Lord Campbell for having made such a selection. Luckily, time would show to a certainty whether the aspersions were well-founded, and they all proved to be mere fabrications. The truth was, the new judge had been taken from the back row of the Queen's Bench, he not having obtained the honour of a silk gown; and, of course, there were many leaders superior in rank to him, and who thought themselves slighted by a junior obtaining a position they so earnestly coveted to fill.

The distribution of patronage is a very delicate operation. Louis XIV. used to say it always afforded him great annoyance when any important office fell vacant; for, in giving it away, he was sure to make a number of men his enemies, and one man ungrateful. With the prejudice existing against Lord Campbell, he was peculiarly amenable to attack in this direction, and he had to encounter its full force whenever an occasion offered for its display.

But I may say, without fear of contradiction or risk of any insinuation of flattery, that society is much indebted to Lord Campbell for having chosen Mr. Colin Blackburn to occupy a seat in the Queen's Bench, and the subsequent career of that learned judge amply justifies the remark. The other appointment I have referred to was that of my friend Sir Colley Scotland to the Chief Justiceship of Madras. It was said in this instance, with malicious waggery, that Lord Campbell, having exhausted his list of Scotch relations and friends on whom to bestow lucrative offices in his gift, was resolved to go to 'Scotland' for another *protégé* rather than waste his patronage on anyone of English blood. But this appointment also turned out to be an excellent one: I never could suggest to my own mind any other motive that Lord Campbell had in thus exercising his rights, except that of promoting the public service, and which a naturally keen insight into human character enabled him satisfactorily to carry out. I have no doubt that Lord Campbell was most unfairly traduced by many who, knowing him to be faulty in some respects, refused to believe that he could be faultless in any. But, at all events, were he now alive amongst us, he should be one of the last to cast a stone at those who misjudge others, considering the way in

which he has, in his published works, cast reflections not only upon those who had gone before him, but even upon his own cotemporaries. It was that which induced Lord Lyndhurst to say, in the House of Lords, that the prospect of having Lord Campbell for a biographer would add a new terror to death.

## CHAPTER XVI.

### MR. EDWIN JAMES.

Edwin James—A remarkable Man—An extensive Practice—In Parliament—His Hangers-on—'James II.'—'The Young Pretender'—The Beginning of the End—James is Dismissed from the Bar—He goes to America—Is a Failure in the United States—He returns to England—Becomes Clerk to an Attorney—A Ludicrous Incident concerning James and Hawkins—Richard and Arthur Corner—Chief Justice at the Gold Coast—Chief Justiceship of Honduras.

EDWIN JAMES was a remarkable man. He was for a long time the pet of the attorneys, and the most formidable rival the other leaders at *nisi prius* (meaning trials by jury) had to contend with. He was very sharp and acute, and, in fact, possessed a combination of all the various qualities that are requisite to produce a successful advocate, without having any of them in great abundance. He was not on terms of very close intimacy with law; was not particularly endowed with wit; had no excessive powers of oratory; nor any unusual command of language, but he had sufficient of each of them admirably to serve his turn. He

was like a bowl of punch, where the ingredients must all be mixed in due and proper proportions, while a redundance of any one of them is said to injure the flavour.

By-the-by, Dr. Maginn used to give as his recipe for that beverage—'Put in the lemons first, then the sugar, then add the whisky, and every drop of water you put in after that spoils the brew.'

In London, James's practice was very extensive, and, on the home circuit, he took the wind out of the sails of many much more substantial and able men. When in Parliament, however, he gave notice of a bill which provided that home circuit cases should be all tried in London, the motive alleged for the measure being the much greater facilities there were for suitors and witnesses to come to town than for them to get from one part of the county to another. The truth was that his practice in the metropolis was more lucrative than that which accrued to him in the country, and he wished to retain both. But such an outcry was raised against the scheme, and his object in proposing it was so transparent, that he thought proper to pursue it no further.

He used to have two or three hangers-on, men who had become tired of lying torpid, but earnestly wishing for action, who were in the habit of

holding for him those briefs that he could not attend to himself, while a young connection of his named Allan, who was of a classical turn, he employed in preparing for him quotations, which he subsequently paraded, in impromptu style, whenever occasion served. I remember one of these deputies, who used most frequently to appear as the *locum tenens*, was called James II., while Allan was styled the Young Pretender.

I believe James conducted himself very respectably for several years of his practice at the Bar, but, notwithstanding the large income he must have made, he was at last overwhelmed with debt, and this led him into malpractices, for which he was cited before the Benchers of his Inn, and after a full inquiry, several witnesses having been examined as to the charges brought against him, he was formally disbarred. Shortly anterior to this, he was M.P. for Marylebone, Recorder of Brighton, member of several clubs, as well as Queen's Counsel. All but the last he had been compelled to resign, before the investigation by the Benchers, and the rank of Queen's Counsel was, of course, lost to him when he was dismissed from the Bar.

Whilst he was in parliament an account was taken of the number of speeches made by some of the most talkative members, and it was found that

those appropriated to James far exceeded what were uttered by any other speaker.

So prominent was his position, however, that it was generally said at the time that, if he had restrained his evil propensities, or at least could have managed to keep the past undetected for six months longer, he might have become Solicitor-General; but the temptation to do wrong, when a favourable opportunity offered, was too much for him, and he became degraded and lost to all reputable society.

He went to America and tried to practice in New York, but, from what I heard of him from professional men when I was there, he proved a complete failure, for, clever as he was, he was no match for the Americans.

I was much afraid of meeting him, for I was sure he would want to get what he would have called a loan from me; but luckily the Americans did not understand the title of serjeant, and probably took it for a christian name, so that at hotels and elsewhere, I always appeared with a single S before my name; and this, I daresay, saved me from recognition by my once learned friend.

He returned to England and became a sort of clerk to an attorney. He afterwards took an office at the west-end, and advertised that he was prepared to give advice to anyone who sought it.

The last time I saw him was at the assizes at Guildford, a town that had witnessed so many of his triumphs. He had come down as a witness in some particular case, and was singularly anxious to be called into the witness-box, alleging that it was in his power to give some most important evidence for the party that had subpœnaed him; but the counsel on that side declined to call him, feeling probably that his reputation, damaged as it was, might give his testimony an unpleasant aspect before a jury who might have known him well in other days. Thus, (what everyone would suppose a person in his position would have shrunk from seeking,) he was anxious once again to display himself in public, though in so very different a character from his former one.

The mention of Edwin James brings to mind a ludicrous incident—which happily failed to turn out a disastrous one—in which he and the present Mr. Justice Hawkins played a principal part. I was pulling up the river at Guildford, after mess, with my old friend, Richard Corner (afterwards Chief Justice of the Gold Coast, and subsequently transferred to Honduras in the same capacity). We had rowed for a mile or two along the narrow stream, without meeting with a single human being, for on the one side there are trees bordering parks and fields attached to distant residences,

and on the other an unfrequented foot-path. But, on approaching a lock, we could perceive, standing erect on the middle of the lock-gates, two strange forms that somewhat startled us. We did not recognise them at first, but, on getting nearer, we found that the figures represented our two learned friends above-mentioned. The only clothing we could detect about them was a hat on the head of one, and a pair of boots in the hand of the other. As for James, fat and pursy as he was, he looked the colour of a recently boiled lobster, while the other, thin and spare, gave one the idea that he had been painted a pale blue. There they stood trembling with fear, while Corner and I were puzzled to guess what it all meant; for we had kept our heads turned to the right while nearing the lock, but, on a hint from the boots which pointed to the left, we turned round and the mystery was at once cleared up.

On the pathway was a raging bull, digging his horns into the habiliments of our friends, tossing them in the air, and evidently annoyed that he could not treat the owners in the same fashion. It seems he had come rushing towards them as they were preparing to take a bath, and they had only just time to seize the first article of raiment that came to hand, and run upon the lock with all speed, to save themselves from the animal's fury.

We were of course prepared to render the prisoners the help they beseechingly implored. Having the coign of vantage, for the banks shelved gradually, and the bull could not reach us in mid-stream, we managed after a time by shouts and by brandishing our oars to drive the beast away. When the reprieved captives saw that he was at a respectful distance, they came ashore, dressed themselves as well as they could in their tattered garments, and thanked us warmly for the service we had rendered them; and well they might, for had it not been for our providential appearance, and if the bull had been of a determined and obstinate frame of mind, they might have remained upon their perch, nude and upright, until the next morning. Afterwards, to show their gratitude, I remember they assisted us in carrying our light outrigger over the lock, for there was, of course, no lockman near; and then returned in a rather dilapidated condition to their lodgings, while we pursued our way towards Godalming.

I have often shuddered since at the thought of what might have happened had the bull fulfilled his sanguinary intentions, in the first instance. Our friends could only have escaped his nefarious onslaught by rushing far into the river, and as the water was very deep near the lock, and I do not

believe that either of them could swim, the result would have been the same; they might just as well have quietly waited to be despatched by the enemy. In such a case James would have gone out of the world, leaving behind him a respectable character from his last place; whilst, as to the other, the country would have lost the services of an able judge. The members of the circuit would have been left to bewail the sacrifice of two such distinguished brethren, though I am afraid some few of them would have had mixed feelings on the subject.

I need hardly say that what I have recounted happened while James was in the odour of professional sanctity, or rather before he had transgressed the eleventh commandment: 'Thou shalt not be found out.'

Richard Corner, whom I have mentioned as being with me in the boat on the river at Guildford, was one of my oldest friends on sessions and circuit. He was of a quiet, retiring disposition, and little fitted to cope with the rougher intellects of the competitors by whom he was surrounded. He was a great authority on crown practice, and conjointly with his brother Arthur, who was one of the masters in the crown office, he published a treatise on that very recondite and dismally technical subject, and which has remained a

standard authority up to the present day. He made very little way at the Bar, and applied for the appointment of Chief Justice at the Gold Coast. We were very sorry when his application was granted, for we never expected to see him again. He was very amiable and very popular, and we were naturally sorry to lose him. The 'revocare gradum' was not usual in this respect, although the 'facilis descensus' was very simple and easy. The pestiferous climate and other little casualties generally settled the business without any unconscionable delay.

There was a current rumour amongst us that there were always three actual or potential judges nominally attached to that inhospitable coast. There was one coming home in his coffin, another performing the duties of the office, and a third going out ready to succeed him. It was also believed that one of our body asked for some such office on the coast of Guinea. He was charmed at the success of his application, the fact being that anyone who asked for it was pretty sure of getting it, so slender was the competition for martyrdom involved in these deadly regions. He was about to start, when he suddenly appeared at the Colonial Office, and resigned the appointment he had been so anxious to obtain. The fact turned out to be that he had just received an

authentic account of how the official whom he was going out to succeed had shortly before been served up on hot toast at a grand banquet given by the king of one of the hostile tribes in the immediate neighbourhood of his district.

Corner was a very temperate and abstemious man, who possessed, moreover, a very porous cuticle. He always appeared to be in a perspiration, and the torrid climate, that played such havoc amongst Europeans generally, never affected him. He never could get himself up to fever-heat. He remained at his post for some years, and came back in as good health and condition as when he left us. He went to the Colonial Office to inquire about a pension. The officials seemed a little staggered at the suggestion; they knew not what to say about it, but they would look into the matter and let him know the result. It was a long time before he heard from them, but at length he was told that they had searched for precedents, and could find no record of any judge from the Gold Coast who had ever survived to be in a condition to make any such extravagant demand.

Of course nothing could be done without a precedent, but it happened that the Chief Justiceship of Honduras was then vacant; this they offered him, and he accepted it. He told me

that he lived all his time there upon piles; but he was as proof against moisture as he was against heat. He returned to England as well as ever, and died eventually in Surrey at a ripe old age.

# CHAPTER XVII.

## THE 'GOOD OLD TIMES'—LORD BROUGHAM—EDUCATION.

Lord Brougham—First Reform Bill—Queen Caroline—Her Funeral—Canning—The Masses and the Classes—Socialism—Before the Days of Railways—Slow Travelling—The 'Old Charlies'—Hackney Coaches—The Old Postman with his Bell—Dear Postage—Flint and Steel—The Tinder-Box—The old Matches—The Snuffers and Tray—Introduction of Lucifer Matches—Lord Brougham and Education—Sir Edward Sugden: Lord St. Leonards—Lord Melbourne—Lord Cottenham—Chelmsford Jail—Education and the School Board—The Society for the Diffusion of Useful Knowledge.

BEFORE I venture on saying a few words with reference to Lord Brougham, who at the time of the first Reform Bill I held in the greatest horror, I may remark that the earliest public events I perfectly remember were those immediately preceding the death of Queen Caroline. I witnessed many of the processions that went up to present addresses to her, and I bear in mind particularly those of the sailors and the ladies. The latter made their progress in a great number of open landaus, and were decked out in all the colours of

the rainbow: I thought them at the time very stately and courtly dames of high birth and peerless virtue, going on a mission of charity and sympathy to soothe the distress of an oppressed queen. Were I to see a procession of the same class now, I should probably entertain a very different opinion. I was not then aware that these were mere political movements got up like the meetings in Trafalgar Square, and attended by people who knew little and cared less what were the real objects of their promoters.

I well remember seeing the funeral *cortège* of Queen Caroline, which was of immense length, as it passed along the Mile End Road, amid great crowds of people. But the mob was very orderly and well-behaved at that part of the route, for I know that the impression it made on my childish imagination was one of deep solemnity.

To my knowledge, the first great man my eyes ever rested on was Canning; but this was three or four years later. To my mind, his handsome face and figure were quite enough to justify his reputation. The consciousness that I was privileged to look upon so illustrious an individual, about whom I heard so much discussion without quite understanding why, made me think more highly of myself than I had done before. But then came the years between 1830 and 1832, and,

by that time I considered myself quite qualified to take an active part in politics, and I am not ashamed to confess that my predilections were all strongly enlisted on the Tory side. Lord Brougham was then the most prominent man of the day, and with his peculiar cast of feature I soon became familiar, not only by personal inspection, but—as everybody else did—by the many caricatures that were extensively circulated throughout the country, and his profile made a very striking one. He was worshipped by the reformers, who looked upon him as the boldest and most potent sustainer of their cause; while the Tories regarded him as the willing subverter of the constitution and the arch betrayer of his country.

And where are the Tories now? There is not a vestige of one in existence; for that which gave to Toryism force and vitality has vanished from amongst us. Were the tenets, which the Londonderrys, the Winchelseas, and the Sibthorps then held most sacred, to be broached now, they would shock the nerves of the most inveterate Conservative that at present sits on the right of the Speaker's chair. Such has been the progress of democracy.

I am not sure that the community has much benefited by the change. It has been brought about by leading and unscrupulous politicians—

when they sought to gain an advantage over their opponents by calling to their aid the physical force of the untutored masses, and giving to them in return privileges they had not hitherto possessed, and which, when once conceded, it was difficult or perhaps impossible to recall. The manœuvre precisely realises the fable of the horse and his rider. It was said that the race of horses anciently formed a separate and independent community of their own, governed as we are by party. But it happened that one side, getting the worst of it in a serious struggle, called in the assistance of man to help them against their foes. They allowed their new friends to mount them, and guide them by putting bits into their mouths and bridles on their necks, and by these means gained a complete victory. This happily accomplished, they politely thanked their benefactors, and were preparing to return triumphantly to their native haunts; but their riders did not see things in the same light. Having once obtained a mastery over these useful animals, they were determined to retain it, and they speedily reduced them to a state of servitude.

It is precisely in this way that the untaught and credulous, though powerful multitude have gained their ascendancy over the intelligence and caution of the upper and middle classes. It is

not to be expected that the people would fail to exercise the power that has thus been voluntarily conceded to them. One concession is naturally followed by another, and this will go on until the pyramid which represents society is completely inverted. If I am to be trodden down, I would prefer that the operation were performed by the hoofs of the educated and enlightened, who have something to lose by revolution, than by those of the ignorant and easily deluded rabble, who would look upon an equal division of property as the greatest blessing to the country.

There is no reason, perhaps, why we should, at the present day, think the worse of a man because he happens to be a member of parliament, but there can be no doubt that the standard of legislatureship is very much debased from what it used to be, especially at its *parvenu* extremity.

We are far too apt to rush into extremes. We are inclined to sweep away a whole system because there are one or two defects in it. Instead of amending, we are perpetually bent on destroying, like the man who pulled his house down because there was a room in it afflicted with a smoky chimney.

Lord Brougham ultimately discovered that the principles on which the constitution was formed did not really want changing, but that the abuses

which had crept in under its administration required to be got rid of, and that these might have been corrected without the main system being destroyed. I am afraid we are too often deceived by looking to results, and attributing to legislation the vast increase in the comforts and conveniences of life, compared with those existing in the busiest part of Lord Brougham's career. But, in truth, legislation has no more to do with the phenomenon than the death of a great man has to do with an eclipse. I believe the two things are perfectly independent, and that steam-engines, hansom cabs, electricity, and the new police would have placed themselves at our service under the *régime* of a Pitt or a Castlereagh quite as promptly as under a Grey or a Melbourne. No doubt the contrast is a startling one, and well worthy of reflection.

I can scarcely realize it even to myself, though I well remember the fact, that it took me a week to travel from London to Edinburgh in a Leith smack, and there was no other available mode of getting there—that you could not be sure of getting to Gravesend without a 'salvo' of 'wind and weather permitting.' I was a day and two nights in going by mail to Liverpool from London, and the performance was advertised as a miracle of speed! Even then your place in the

scanty vehicle had ordinarily to be taken a week beforehand, as the number of passengers was of course very limited, and, if you failed in securing a seat, you had to stay at home for happier times, however urgent might be your business.

I remember, too, when the 'old Charlies' used, as it was jocularly said, to go to sleep in their watch-boxes, leaving instructions that, if any thieves or disreputable characters came into their neighbourhood, they were to be immediately aroused. You might frequently hear them, however, calling out the hours of the night or morning, and adding a statement as to the condition of the weather. Hackney-coaches were never seen without two small-sized horses, lumbering along at the rate of three miles an hour, while omnibuses and hansom-cabs were as yet unknown.

It would seem strange to most people of the present time, if a scarlet-coated postman, with a huge leathern sack in his left hand, and a large bell in his right, which he was continuously ringing, paraded the streets about five o'clock in the evening collecting letters for the post, and dropping them into his sack; if you chanced to miss him, you had to trudge with your epistle to the General Post Office in Lombard Street, for there was no nearer letter-box. The postage of a single letter to Liverpool was eleven-pence, though, if

you were favoured with the acquaintance of a peer or a member of parliament, he might frank your missives to the extent of fourteen per diem, and might himself receive free by post not only letters, but legs of mutton, haunches of venison, and pretty well any other commodity that was sent him.

The only mode of obtaining a light was by a resort to flint and steel, emitting sparks into a tinder-box—if you were persevering and skilful enough to elicit them, without damaging the cuticle of your knuckles; then, by applying a match, consisting of a thin flat slip of wood tipped with brimstone at both ends, an illumination was got in time, combined with a noxious and disagreeable smell. But, when you had lighted your candle, a pair of snuffers (with a tray to hold them) was indispensable, to cut off every now and then the redundant and glowing wick. There is nothing that reminds me so much of my antiquity as the thought of tinder-boxes and snuffers. The sale of these matches, spread out like a bunch of radishes, was the staple occupation and excuse of every street-beggar of the period.

The first improvement on this tinder-box arrangement was a bottle of acid fitted into a tubular card-board case, in the upper compartments of which were small sticks of wood, like

our wooden matches of to-day, tipped with a composition which, when introduced into the acid, immediately produced a light. This system continued in vogue until the introduction of our present lucifer matches. A classical young vendor of these articles was heard to cry out:

'Oh! Lucifer, how art thou fallen! Lucifer matches only a half-penny a-box.'

There are many people living who, of course, well remember these things, but there are many also in whom they will excite surprise. When we compare those times with the present, it seems as if there might well be an interval of centuries between the two epochs. The march of intellect and improvement seems to have taken a sudden leap; but it would have taken it all the same whether Toryism or Democracy had been in the ascendant. But while Radical legislation, and what may be called the advance of civilization, have been so concurrent, it is not to be wondered at that they are generally regarded as cause and effect. I think Lord Brougham helped, in a great measure, to bring about both results. We are enabled, at this distance of time, to get a tolerably clear insight into his character. Ambition seems to have been its prevailing feature. He was a bold, turbulent, restless man who, whether in the Cabinet or out of it, was always more ready to

dictate than to advise. He was like the twelfth juryman who thought the other eleven took a most unconscionable liberty with him in refusing to come round to his way of thinking; and he often, by his waywardness, did infinitely more injury to his friends than he inflicted on his foes.

The former wishing, if possible, to shelve him, tried hard to get him to accept the Mastership of the Rolls, with a peerage. It was a permanent appointment, with a very large salary attached to it; but he felt that the House of Commons was the only arena in which his powers could be influentially exercised, and he refused to rise at the bait that had been so insidiously thrown out to him. It is Lord Campbell, I think, who relates that a friend remonstrated with him for declining so desirable a post, alleging that the road to the chancellorship was still open to him.

'Yes,' he replied, 'the road might be still open, but the horses would be taken from the carriage.'

His eye was always on the *Great Seal*, which he ultimately obtained; but it was given him rather from the fear of refusing than from a wish of conferring it. And, if I might venture to express an opinion, he did the judicial portion of his duty fairly well; but, as a matter of course,

his decisions were sorely carped at. Long afterwards, some one spoke of him as a very inferior judge, who knew very little either of law or equity.

'Well,' said a bystander, 'it would be very singular if that was so, since so few of his judgments were appealed against.'

'Not at all,' remarked the other, with true Hibernian simplicity, 'his decisions were so atrociously bad that there was no appealing against them.'

There was always a standing feud between him and Sir Edward Sugden—afterwards Lord St. Leonards. The latter was not of a very conciliatory disposition; he was, on the contrary, rather crabbed in manner and style. On some provocation, real or fancied, Brougham once spoke of him as a bug, an insect that irritated without seriously wounding. Sugden, by way of retort, complimented his rival as a man of singularly varied and extensive knowledge, and that, if he only knew a little about law, he would know a little about everything. This was probably a parody on a clever and terse maxim propounded by Brougham himself, that a public man should strive to know something about everything, and everything about something.

Lord Melbourne, who, as prime minister, was a

quiet, placable, easy-going chief, had much difficulty in managing Brougham, who was his chancellor—probably it would be more correct to say that he invariably found him unmanageable. Melbourne went out of office in 1834, and Brougham, of course, went out with him. In 1835 the former again became premier, but instead of Brougham he appointed Pepys, Lord Cottenham, as chancellor, a steady, unobtrusive personage, not likely to give trouble. It was said at the time that Melbourne must have felt like a man who had got rid of a capricious mistress, and married his housekeeper.

It affords food for reflection that one who had, during early and middle life, played the part of a tribune of the people, should, during the remainder of it, become a staunch upholder of Toryism and prerogative; but we find the same peculiarity in the careers of Sir Francis Burdett, Lord Beaconsfield, and many others. It is perhaps not difficult to account for. In the ardent and generous impetuosity of youth, men have an earnest desire to correct whatever in their judgment may savour of abuse or injustice; and the best form of government that was ever devised must be fraught with anomalies and defects which it might be very desirable to get rid of, if this could be done with safety. But headlong reformers do not sufficiently consider what may be the remote con-

sequences arising from such an attempt. The various parts of the constitution are so closely connected, and so mutually dependent upon one another, that, in seeking to cure one evil, we may be unconsciously introducing many more serious ones, just as by tampering with what may appear to be an insignificant, useless bolt or screw in a steam-engine, we may derange the working of the whole machine. I may mention the celebrated instance of the statute for the rebuilding of Chelmsford jail. An early clause prescribed that prisoners should be confined in the old jail until the new one was built; but, at the last moment, a section was added to the effect that the new prison should be constructed out of the materials of the old one, and so the bill passed for the time without the glaring inconsistency being detected.

Experiments on vital political institutions are dangerous. They often destroy a great deal of what is good in the endeavour to make it better. In speaking of what has sometimes been termed Brougham's apostacy, I only wished to express an opinion that a gradual transition from extreme Liberalism to downright Toryism seemed to me a more natural line of conduct than a directly reverse process—mainly on the ground that caution and prudence are the normal growth of time and experience; but I should prefer a consistency in political creed

throughout life, where it is the result of honest conviction, on whichever side it is exhibited. I can only call to mind, at the moment, a single instance of a man—one of immense talent—commencing his career as a professed Tory, and not until nearly the close of it, putting himself prominently forward as a violent and uncompromising Radical.

Whatever might have been Lord Brougham's faults, I think the country owes him a debt of gratitude for the zeal and earnestness he displayed in the promotion of education among all classes. I have always looked upon him as the pioneer of improvement in the method of teaching that has long been in vogue. But notwithstanding his thirst for knowledge, and his desire to impart it to others, I very much doubt whether he would have approved of the course pursued at the present day, in the amount of gratuitous instruction given to the poor. Still less that he would have sanctioned large sums of public money in educating a body of teachers in the highest branches of the classics, of science, and of mathematics, to qualify them to instruct that section of the people who are too poor to obtain instruction for themselves. To this class, I think, we are bound to teach the 'three R's,' as they are called, reading, writing, and arithmetic. To do more is not

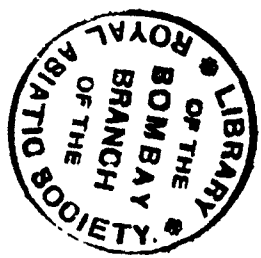
only to put an oppressive tax upon the community at large, but, in my judgment, is calculated to have a most pernicious effect upon the poor themselves. Of what use is the acquisition of a knowledge of music, drawing, and the use of the globes to a labourer or an artizan? It would only be taking them out of their proper sphere, and putting ideas into their heads which would be certain to result to their detriment. The 'three R's' are, as it were, the implements of knowledge, and these it might fairly be for the benefit of society to bestow upon the lower orders as a free gift. But, although every encouragement should be given to induce young men to seek for higher attainments, it should be obtained by their own energy and industry, and at their own cost, and not by any subvention from the state. Hewers of wood and drawers of water are as essential to the welfare of a country as the proficients in art and science, and, while the middle classes have to pay for the education of their own offspring, it seems rather hard as well as anomalous that they should have to contribute to the scientific instruction of those who might afterwards become rivals in the struggle of life with the first objects of their parental care.

Lord Brougham's course of proceeding seems to have required no great national outlay. He

sought rather to induce people to instruct themselves than to seek aid from any external sources. He encouraged the publication of cheap elementary treatises on matters of general knowledge; he sought to bring what had hitherto been the abstrusities of science down to the level of the most moderate understanding; he inaugurated mechanic, as well as literary and scientific institutions, but wished nothing to be undertaken but what, in the end, would be self-supporting; and this was perhaps the most notable and valuable portion of his design. He repudiated the idea of benefiting one class at the expense of another, except where circumstances rendered it absolutely essential.

He did not advise the raising of the poor, intellectually, above their original position, leaving the remainder of society where it was before. His plan was to promote the improvement of the population generally, from the highest to the lowest, so as not to alter the relative distinctions in condition already existing between its different grades. If the poor were advanced in knowledge, the rich would be advanced in the same proportion. I believe his object has been, to a great extent, effected; for I have no hesitation in expressing my belief that there are few men of the present day, however high may be their attain-

ments, who have not derived considerable advantage from the easy and familiar mode of imparting instruction on recondite subjects that the efforts of Lord Brougham originally introduced. He established the Society for the Diffusion of Useful Knowledge; and, notwithstanding that his detractors were fond of changing the word *diffusion* into *confusion*, there is no doubt that the simple elementary treatises on science published under its direction did a vast deal to lead people of all ranks to the consideration of what had been hitherto to them a sealed book.



## CHAPTER XVIII.

### SERJEANT MURPHY.

Serjeant Murphy—A Wit among Lawyers, and a Lawyer among Wits—Nephew of an Irish Bishop—Popular at the Reform Club—Soyer the Chef—Madam Soyer—Anecdotes of Murphy—Samuel Warren—Raines, Martin, and Sir Gregory Lewis.

SERJEANT MURPHY, who flourished between thirty and forty years ago, and died a little later, was a person of some mark in his time, and was looked upon as a wit amongst lawyers and a lawyer amongst wits, to use an old antithesis; but his claims were something like mine, rather due to memory than to invention. He was a gay, lively, rollicking person who could say smart things upon occasion. Some one once remarked of the portrait of a man that it was a much better likeness of him than the original; and it may be said of Murphy that, in speech and accent, he was much more Hibernian than his countrymen themselves. But this qualification only gave a more racy tone to his occasional impromptus; but there was this very marked attribute about

him, that he never could bear a rival near his throne. He was like a body charged with either a positive or negative form of electricity, which, when it comes in contact with another saturated with electric fluid of the same kind, produces no action, and makes no sign. Murphy, in the presence of another jester, was always silent and dull; no sparks nor flashes of merriment were emitted from his lips, but he was in a thoroughly negative condition. I have often seen him in the presence of Thesiger, Wilkins, Phillips, and others, who rattled off their pleasantries, apparently stimulated rather than checked by each other's presence; but Murphy always sat moody and subdued, and seemed to be indignant at his privileges being unfairly interfered with.

He was the nephew of an Irish bishop, who was supposed, with other members of the family, to have supported him. He was for some time in Parliament, but without greatly distinguishing himself. He always, as was said (I think) of Sheridan, carried a great deal of sail, but not much ballast. Had he lived in recent times before the introduction of the closure, he might have had better fortune; for then, everyone gifted with a strong Irish accent was supposed to have claims to consideration and attention that were incontestable.

Murphy was, I believe, very popular at the Reform Club, of which he was a prominent member, and could always find a fitting auditory to listen to his well-assorted *bon-mots*. He was somewhat of a gourmand, and was said to cultivate the good graces of Soyer, the celebrated *chef*, who then administered so successfully to the gastronomic necessities of the members. Madame Soyer was an artist—I believe of some power,—but she possessed an arrogant temper, and it was generally rumoured that the poor cook had rather a warmer time of it at home than he had in the club kitchen. But one day the lady died and was buried, and the bereaved husband asked Murphy for an appropriate epitaph to put upon her tombstone.

'You cannot do better,' he replied, 'than to inscribe upon it, "Soyer tranquille."'

Some one, who evidently did not know much about us, once said to Murphy,

'I do so admire you members of the Bar; you always appear to me such Titans in intellect.'

'Do we?' said Murphy. 'At all events, you would find some of us rather loose-uns in morals.'

A physician, a friend of his, once came to consult him about calling out some one who had insulted him.

'Take my advice,' said Murphy, 'and instead

of calling him out, get him to call you in, and have your revenge that way, it will be much more secure and certain.'

The only occasion on which I ever heard of Warren making a pithy retort, was uttered by him at the expense of Murphy and in the way of fair retaliation. The flighty serjeant was very prone to bantering, or, as it is called, chaffing men when he thought he could do so with impunity. At the mess on the northern circuit, he once called out to Warren, who was seated some distance from him,

'Well, Warren, what is Titmouse about now? What court have you dragged the poor fellow into?'

'Oh,' was the reply, 'they have made him a serjeant, and he has never had the opportunity of opening his mouth in any court since.'

Serjeant Murphy died before I took the coif, so that I had no means of knowing much of him in that quarter; although I should think his peculiar characteristics would not find much favour amongst his associates there. They were well-seasoned story-tellers, and did not highly appreciate premeditated witticisms intended to appear spontaneous. But on the northern circuit, where there were young as well as old, and at their circuit court, as it was called, where they were

very much given to fun and frolic, he took a much better position. He once, I have heard, received the appointment of Pope, and proceeded to select some members of the mess for his saintly cardinals. One named Raines was dubbed St. Swithin Rains; Martin, from his habit of asking questions, was called St. Martin Axe; and Sir Gregory Lewin, who had travelled much through Europe, and was always relating his adventures, was named St. Gregory of Tours. What I did see of Murphy personally,—and I saw him often,—satisfied me that he was cold and heartless. His jokes often verged upon the indelicate, and, although not very objectionable, render some of my notes respecting him unadapted for general circulation.

## CHAPTER XIX.

### LORD WESTBURY.

Lord Westbury—My Friend Nichols Accepts the Registrarship in Bankruptcy at Manchester—George Harris—Trafford—Serjeant Hayes—Justice Willes—Serjeant Ballantine's Opinion of Him—Motion Days in the Court of Appeal—Chief Justice Erle—Westbury a staunch Churchman—Westbury's Cynicism—Merrywether, Q.C.—A Sayer of Smart Things.

In a former part of these erratic recollections I have mentioned my pupillage under my friend Nichols, once judge in the Insolvent Court, and afterwards county-court judge in Birmingham, and my object in referring to him was to seek in my humble way to do justice to one who to a great extent never did justice to himself—to one who, by his pungent wit and an irresistible tendency to use it against those who were for the moment his antagonists, made himself many more enemies than he deserved; for he possessed many generous and sterling qualities, for which he is at least entitled to credit. I refer to Sir Richard Bethel (Lord Westbury), once Lord High Chancellor. The circumstances, too, under which he

retired from public life, by reason perhaps of a responsibility formally cast upon him in his official capacity, involved no imputation upon his moral character or conduct.

I knew little of him personally, for I had very little to do with the Chancery Courts, to which his duties throughout his career were exclusively devoted. But what I am about to state respecting him came within my direct cognizance, and it displays, to my thinking, a recognition, in the distribution of patronage, of what he considered well-earned merit as contradistinguished from the influence of self-gratification, or the importunity of urgent and indiscriminating friends.

It may be remembered that my pedagogue Nichols ceased to be a judge of the Insolvent Court when its former duties were amalgamated with the new proceedings in bankruptcy, and he was without office and without pension. He had no right to complain, for he had accepted the situation on the precise terms that he was to expect nothing in case of his forced retirement. But, shortly after his cessation from official work, Lord Westbury wrote to him stating that he was quite aware of the arrangement made when he had taken judicial office, but he found he had done good service while holding it, and that he

felt he was entitled to some reward—that the only vacant place in his gift was a registrarship in bankruptcy at Manchester, of which the salary was one thousand pounds a-year; if Mr. Nichols thought it worth his acceptance, he should be happy to give him the appointment.

Now Lord Westbury knew nothing of Nichols personally, and had never seen him except on public occasions. On the other hand, the post was quite unsolicited on Nichols's part, for he was not even aware that any vacancy had occurred. He, however, at once accepted the offer. But this was not all, as far as the Lord Chancellor was concerned. Another very old and intimate friend of mine—George Harris, of the midland circuit, author of 'The Life of Lord Hardwicke'—had often acted as *locum tenens* for the aged judge of the Birmingham County Court, named Trafford. This old gentleman, when on a visit to London, was run over by some vehicle, and received such injuries that he shortly afterwards died. Harris at once asked the Lord Chancellor for the appointment. He received an answer to the effect that Lord Westbury, in conjunction with the ex-Chancellors, had come to the resolution that it was highly inexpedient that a county-court judge should be allowed to appoint his successor, which would to some extent be the

result if services thus rendered should be considered as establishing any claim to the succession. But on inquiry he had found that the applicant had given every satisfaction to the suitors and to the public, and, inasmuch as he intended to offer the judgeship to Mr. Nichols, if Mr. Harris chose to accept the registrarship which the other would vacate, he would place it at his service. The offer was accepted with thanks, and the two appointments were made.

It happened singularly enough that these registrarships in bankruptcy under the then system were very soon swept away by a new statute; but there was no such pauperising clause with regard to Harris's engagement as there had been in my friend Nichols's in the Insolvent Court. The former obtained a pension of two-thirds of his full official salary, which he has enjoyed ever since. I saw all the correspondence that took place between the Lord Chancellor and my two friends, for they always made me a confidant in their affairs, and I can truly say that nothing could be more amiable, kind, and considerate than the terms of the Lord Chancellor's letters.

When we consider the multitude of applications that flock in upon a dispenser of patronage, when a vacancy occurs which it is his duty to fill up—urgent relatives, ancient friends, necessitous

acquaintances, even those who can boast no further intimacy than a mere professional recognition, all consider that they have a valid claim upon the patron—the selection of two absolute strangers to fill two responsible positions, men who had nothing to recommend them except a steady performance of their duty in other departments, was surely highly creditable to Lord Westbury, and well deserves commemoration; and I have heard from many juniors that when he was at the Bar, and when they treated his opinions with becoming respect, even though not with entire acquiescence, his demeanour towards them was always amicable and conciliating.

It must be remembered that a leader in large practice has a great deal in his power, not so much to promote the advancement of his younger associates in a case, but by sharp and disparaging observations in their dealing with it, to injure them in the mind of the client. But it must be admitted that Lord Westbury was not a man quietly to brook contradiction or persistent opposition to his views either on the part of young or old.

I have heard Serjeant Hayes (afterwards a judge) relate particulars of a consultation he had with Sir Richard Bethel and Willes (who subsequently became Justice Willes), admittedly one

of the most profound lawyers of his time. But, on the occasion Hayes spoke of, the future judge was young in the profession, and, though his qualifications were well-known to the Common Law Bar, they were not as yet recognised on the other side of Fleet Street. When the three assembled, the two seniors expressed a very decided view as to the law of the case; but the junior had the temerity to differ from his leaders, and proceeded at some length to give the reasons for his dissent. Bethel, meanwhile, scarcely condescended to listen to the process, but, when the junior had finished, simpered forth, in his usual lisping style,

'Well, Serjeant Hayes, we have come to a clear opinion on this case, and this young gentleman—I forget his name,' (referring to the back of his brief), 'ah, I see, Mr. Wills, or Willes, or some such appellation—I understand differs from us; perhaps he will be kind enough to write out the conclusion we have come to, and send it to us for our signatures.'

I have heard Hayes say that Willes turned out to be right eventually, but he never forgave Westbury for this marked discourtesy. The latter, by this occasional supercilious treatment of men, very much added to the number of his foes.

I must interrupt myself for a moment to say

that I think my brother Ballantine has treated Justice Willes somewhat severely in the judgment he has passed upon him. No doubt he was in his manner very prim and precise, and was perhaps as peculiarly distinguished as Serjeant Murphy by a strong Irish brogue; there was, too, in his mode of speaking, a sort of mincing lisping emission of his words, not much unlike that of Lord Westbury, and which might easily have been taken for affectation. I have sometimes thought, in reflecting on the interview which Hayes related, that the Chancellor might have imbibed an erroneous impression that Willes was mimicking him, and that his contemptuous manner was meant for retaliation. As for Willes, although peculiar, he was a pleasant companion, and a courteous and honourable gentleman; and, from the period of his joining the Bar to his untimely end, I believe he had acquired the esteem and the affection not only of the home circuit, of which he was a member, but of the whole profession.

I am not much disposed to put faith in strictures made upon judges by advocates, in consequence apparently of their having had judgments pronounced against them, in cases that they had hoped to win. There are few of us who have not had abundant cause for indignation against members of the Bench, if a decision in favour of

our adversaries would justify it. It is not every man that will quietly acquiesce in his own defeat; but I should say, *à priori*, a judge who has no interest in giving a decision, except that of doing his duty, will be more likely to be right in his view, than the advocate who feels that one of the main elements in insuring his advancement is success in the causes in which he is engaged.

I have been induced to make these remarks, because with respect to the individuals to whom I think Ballantine has done less than justice—I mean Cockburn and Willes—it is plain that his censure arises from the fact that they had both given decisions against him. It is quite possible that they were wrong; but they are entitled, even then, to share with all mankind in the excuse of human fallibility.

But, to return to Lord Westbury, there is another instance of what may be termed flippant impertinence on his part. It was shown in replying to a member of the House of Commons, who had annoyed him by some personal remarks while previously addressing the House. Bethel, in the course of his speech, quoted some Latin sentences, and added,

'Inasmuch as I cannot suppose, from the honourable gentleman's antecedents, that he can possibly understand the lines I have just quoted,

the House will perhaps excuse me for unnecessarily occupying its time by translating them, exclusively for the honourable member's benefit.'

There were certain days in the Court of Appeal on which only motions of course—that is, matters of a quasi formal character which are unopposed—are taken. It is said that Bethel on one of such days moved for the rehearing of a case which had been tried before a judge whose decisions were not infrequently reversed.

'But I thought, Sir Richard,' interrupted the Chancellor, 'that we only took to-day motions of course?'

'This, my lord, is a motion of course, or at all events equivalent to it,—it is a judgment of Vice-Chancellor ——'

Of another member of the Bench recently appointed, he said,

'When my learned and respected brother has gained a little experience in administering the law, he will turn out to be one of the worst judges that ever adorned the judgment-seat.'

Probably Westbury intended to pay Sir William Page Wood (afterwards Lord Hatherley and Lord Chancellor) a compliment when he said of him,

'Wood is a despicable creature—brimful of virtues, without a single redeeming vice.'

It is said that Westbury once remarked to

Chief Justice Erle, after the latter's retirement,

'I wish, Erle, you would sometimes come in to the Privy Council, and relieve me from my onerous duties there; for we can't get on without three, and there is no one else I can apply to.'

Erle said he would willingly come, but he was getting a little deaf, and was afraid that might interfere with his power of doing full justice.

'Not at all, my dear fellow,' said Westbury. 'Of my two usual colleagues, —— is as deaf as a post, and hears nothing; —— is so stupid that he can understand nothing he hears; and yet we three together make an admirable court.'

Westbury, although always professing to be a staunch churchman, was not much in the habit of attending church. He was remonstrated with by a friend on his inconsistency, and told that he was bound to support his theory by his example.

'I daresay you are right,' was the reply; 'but I am like one of the buttresses of the edifice, which are of much more service to it on the outside, than the in.'

I am afraid that the instances I have given of Lord Westbury's tendencies are not likely to create a favourable impression of his character, at least for amiability. But his well-known cynicism, though it procured him many enemies, did not alienate from him many sincere and attached

friends; and what I have related of him at the outset will, I hope, prove that a very rough and bitter tongue is not altogether inconsistent with a generous and kindly heart.

Before I part with Lord Westbury, I will just mention a little colloquy between him and Merrywether, Q.C., which took place on their casually meeting at a railway-station. They were both big rotund men, of whom it might be said, as has been quaintly said of others, 'They seemed to have lived on the fat of the land, and as if a great deal of it had stuck to them.' After the first greeting was over the Chancellor said,

'Why, Merrywether, you are growing as fat as a porpoise.'

'Yes, my lord,' said the other, eying Westbury from head to foot, 'or a Great Seal.'

Merrywether was not unknown on the western circuit as a sayer of smart things. He was once accosted in the street by a stranger, who said to him,

'I believe, sir, you are Serjeant Jones.'

'Sir,' said the Q.C., 'if you believe that, I have no hesitation in saying you would believe anything;' and he stalked on.

A witness, whom he was cross-examining, tried to baffle him by fencing with every question. At last he said,

'I did not come here to be bamboozled by counsel; I am a plain man.'

'Really, sir,' said Merrywether, 'you do yourself less than justice. I can discover nothing plain in your features, and certainly none in your answers to my questions.'

# CHAPTER XX.

## SERJEANT ADAMS.

Jack Adams—Arabin—The Name of Smith—Lord Campbell—The First paid Assistant Judge at the Middlesex Sessions—He is Addressed as 'My Lord'—Lord Denman—Anecdotes of Adams—His smart Sayings—Sir William Bodkin—Joseph Payne: 'Tom Paine'—His Interest in Ragged Schools—'A most Worthy Being,' but a Severe Judge—Anecdote of the late Earl of Carlisle and Archbishop Whateley.

SERJEANT ADAMS (Jack Adams, he was invariably called,) was a somewhat anomalous being of whom everyone talked, though no one precisely knew why, except that he was very self-asserting and very fussy; but he was shrewd and good-natured, and never excited ill-will in the minds of any one of his competitors. I do not think there were many that could fairly be called such, for he had little business, and does not seem to have been burdened with much law, if the following tale which is told of him be true. There are certain courts in which, if a verdict for less than twenty pounds is returned, it is a fixed rule that the superior courts will always refuse to grant a new trial. Adams

was moving to set the verdict aside in a case tried in the Sheriff's Court (one within such rule) before Arabin, whose notes were almost undecipherable by anybody, himself included. The letters were unformed enough, but his figures were much worse. Adams, on behalf of the defendant, went on for a long time discussing the subject-matter of the action, enlarging on the merits of his client's case, and strongly urging that the verdict was altogether wrong. At length he said,

'My client is fighting for a principle, otherwise he would not contest the question of the damages the jury have given, for they only amount to eighteen pounds, ten shillings.'

'Why did you not, brother, mention that before,' said the judge, interrupting him, 'instead of wasting three-quarters of an hour of valuable time in a useless argument. You ought to have known that your application was futile.'

There was another case, I remember, somewhat analogous, in which one of the numerous family of the Smiths appeared for the plaintiff. He was on the home circuit and the Surrey Sessions, and, perhaps in justice to the multitude of persons of the same cognomen practising there, I ought to mention that the Smith in this case had the word Baker prefixed to it. He eventually left the

sessions, for the sessions' good, his name being erased from the list of practitioners. This was in consequence of some breaches of professional etiquette, in having taken less than the legitimate fees for defending prisoners. I think his honorarium in one instance amounted, by his own admission, to three shillings and ninepence half-penny; but he, with seriousness as well as simplicity defended himself in the terms of the very old joke, that he took all the man had. He certainly was very simple-minded, and many believed that he was scarcely aware that he was breaking a very salutary rule. He seldom held a brief; for, small as was the value at which he appeared to estimate his own services, the attorneys seemed to think they would be dear even at that very modest price.

The case I refer to was perhaps the only one he ever held in a civil court. It was an action on a bill of exchange. The defendant had pleaded many different defences, but, when the trial came on, no counsel appeared on his behalf. Under such circumstances, the plaintiff's counsel had little to do but claim the verdict, without speech or comment. But our friend Smith was not going to let the court and jury off so easily. He therefore entered fully into all the facts, dwelt on the outrageous nature of the defence, and sought by numerous details to defeat it by antici-

pation. Meantime, Lord Campbell, who was the judge, listened with great attention to the speech, for he naturally supposed the action was going to be warmly contested, and he prepared himself for a serious day's work. But the counsel at length said,

'And what do you think, gentlemen of the jury, of a man who has the audacity to charge my client with all imaginable frauds, and then refuses to appear either in his own person or by counsel to support his pleas?'

Lord Campbell fell back, almost stupefied, in his seat, and fervently ejaculated, 'Good God!' He was so overpowered by his feelings of disgust that he could only find breath to tell the jury to find a verdict for the plaintiff for the amount of the bill, and, before he was sufficiently composed to give the delinquent a piece of his mind, the latter had packed up his papers, and was off the premises.

But to return to Serjeant Adams. He was the first paid assistant judge of the Middlesex Sessions, and, from all I ever heard, he did the work well and pleasantly to all concerned, except perhaps to the prisoners who came before him, and even to these he was merciful. I personally knew little of him as a judge, as there was a great gulf fixed between the Sessions Bar of Surrey and that

of Middlesex, and neither could poach on the other's domain. When he first took his seat, he gave out that he had Lord Denman's authority for saying that he *ought to be* addressed as 'my lord,' and the practice of so styling the occupant of that position has been continued ever since, although such a title was never given to other Chairmen of Quarter Sessions, unless, indeed, they happened to be peers.

Lord Denman was afterwards asked whether he had ever given such directions.

'Well,' said he, 'the truth is Jack Adams came to me, and said that the Bar at the Middlesex Sessions wished to know whether there would be any *impropriety* in their calling him "my lord," and I told him I could see no objection to their styling him what they pleased, so as they did not call him Jack when he was on the Bench, as that might appear disrespectful to a learned judge.'

Thus, if his lordship's recollection was accurate, a qualified permission was interpreted as an express ordinance.

Adams was trying a case of nuisance, and in his summing-up, at the close of the evidence, he enlarged at portentous length on a definition of the offence, and the various elements that were required in proof of it, until the jury became thoroughly tired of listening to him. When he

had concluded, and was passing the jury-box to get to his room, he said to the foreman,

'I will retire while you are deliberating on your verdict, which requires much consideration; but I hope you understand the various points I have submitted to you.'

'Oh, yes, my lord,' said the juryman, 'we are all agreed that we never knew before what a nuisance was, until we heard your lordship's summing-up.'

Jack would sometimes utter a quaint saying that amazed his auditory, and their approbation always gratified him. There was a clever counsel, very persevering, and somewhat boisterous of manner, whom he found it difficult occasionally to get on with. In one of their little amiable altercations—for they never reached extremes—the judge, after several attempts at conciliation, said,

'Well, I have done all I can to promote peace, but the result reminds me very much of the fable of the old man and the ass.'

The counsel, with visible irritation in his countenance, wished to know which of those entities applied to him.

'Neither in particular,' was the reply; 'but, considering our respective ages, you cannot object to my saying that I am the old man.'

Adams was rather fond of dictation, and often interrupted counsel when he thought the latter was pressing a point too far. On one occasion when the same counsel was addressing the jury for a prisoner, and had been once or twice interfered with by comments from the Bench, he spoke rather strongly against this practice of dictation, and told the jury that they were the great palladium of British liberty, and that it was their province, and theirs alone, to decide upon the facts; that they formed one of the great institutions of the country, and he solved a proposition that had been hitherto somewhat doubtful, by telling them that they came in with William the Conqueror.

Adams, at the conclusion of his summing-up, said,

'Gentlemen, you will want to retire to consider your verdict, and, as it seems you came in with the Conqueror, you may now go out with the beadle.'

Serjeant Adams was succeeded in the position of assistant judge by Sir William Bodkin, a man of vast astuteness and of very keen perceptions. His practice at the Central Criminal Court had been very extensive, and may be said to have been more lucrative than that of any of the members located there. But he was, like the Recorder

Law, too respectable to be either the author or the victim of many jests. All he said was very sensible and very much to the purpose. The truth is that men of solid, substantial, utilitarian instincts furnish very little matter for such chroniclers as myself. Their tendencies are rather to satisfy the judgment than to tickle the fancy of others. There are men who would not condescend to utter a joke even if a brilliant one were to rise spontaneously to their lips. There are others who spend their lives in endeavouring to do nothing else. They are both useful in their way, notwithstanding that the former are of no use to me. But there exist people, the salient points of whose character it may afford amusement to contemplate, although they never said what is called *a good thing* throughout their existence.

Joseph Payne, the deputy-assistant judge to Bodkin, was one of these. He was the most simple, guileless, pure-minded creature that was ever thrust before the public. He spent all his leisure time and a large part of his slender income in works of charity and benevolence. He was a constant *attaché* of the Central Criminal Court, and was seldom engaged elsewhere, until he migrated on his appointment to the Middlesex Sessions. His practice was confined to the smaller

class of cases—principally defences—but there was no man who was more respected and beloved by his professional brethren. Although his name was Joseph, he was always called Tom Payne, by way of suggesting a jocular analogy between him and his notorious namesake, the infidel writer. In fact, he used to be, on the same principle, accused of all kinds of moral offences, and minute details as to his delinquencies in this respect used to be invented and playfully adduced against him; but such treatment never ruffled his temper, which nothing could disturb from its ordinary serenity. The harshest reply he ever made to these ribaldries was, while a smile and a blush rippled over his features, 'Get along with you.'

Payne was a great ally of Lord Shaftesbury in founding and promoting ragged schools, and was identified with every movement that had for its object the amelioration and relief of the condition of the Arab portion of the community, as well as of the reformation of the criminal portion. He was the idol of the lady helpers who assisted in the good work on which his whole being was intent. He was once robbed of his watch in Fetter Lane by a young thief who did not seem to appreciate Tom's efforts on behalf of the light-fingered race. But this was no ultimate loss to him, for his lady friends subscribed and bought him a handsome

gold repeater, which he was very proud of showing to his companions, and reciting as he did so, with much unction, the gallant speech he made in reply to the fair presenters.

On Saturday nights especially, but also at other times, he used to lecture to his poor *protégés*, and he never failed to conclude his addresses with a copy of verses he had composed for the particular occasion. If you met him on Sunday morning at the Temple, wearing a green or crimson velvet waistcoat, you might be quite sure that he had been making a speech overnight with some verses as a peroration. What connection there might be between his efforts at night and the glaring vest of the morning we never could understand, but presumed there was one; and you might be sure, too, that the poem was in one of the pockets of the garment in question. The next thing was to charge him with the fact. He began by exhibiting a good deal of coyness—would blush and smile and prevaricate, and at length, after a few utterances of 'Go along with you,' the precious document would be produced and read out with becoming modesty. He once told me, after I had pursued the ordinary process of abstraction, that the one he had just read to me was the eleven hundredth and odd effusion with which he had entertained his auditors. The

truth was that poor Tom was very proud of his verses, and, while he pretended to be reluctant to produce them, it was mere simulated modesty on his part; he only wished you to force him to exhibit them, and, whatever criticism you passed upon his lines, he was never offended; the same blush, the same gentle smile, played upon his countenance. He had about him all the innocence of a child, with the mild enthusiasm of a self-sacrificing benefactor of his species. He was a bachelor, and, when moderately prosperous, he used to dine at Dick's Coffee House, just outside the Temple gates in Fleet Street, and indulged in a pint of wine with his solitary meal; but as he got old, and his small practice diminished, by reason of the competition of younger men, he gave up wine and became a teetotaller, that he might have more wherewithal to bestow in charity.

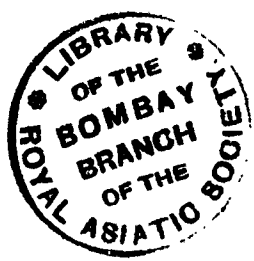
Now, after the character I have given of this most worthy being, there may seem almost an inconsistency in adding that he was looked upon as the harshest judge on any Bench as regards the sentences he pronounced upon criminals. I have heard numberless complaints against him on this account; but I am convinced he was acting, according to his views, whether rightly or wrongly, on the purest principles of philanthropy.

He always advocated the expediency of separating the predatory classes from their old associates in crime, and naturally thought that the longer they were kept distinct, the greater was the chance of their permanent reformation. He thought that the discipline of the gaol and the exhortations of the chaplain were potent agents in turning offenders from their evil ways—for he could never bring himself to believe in an *innate*, unconquerable tendency to sin in any individual—and that the precepts of religion when lucidly brought to the mind and understanding of the worst criminal could not fail to have a beneficial and lasting effect. He thought, therefore, that he was consulting the interests of the prisoner, as well as those of the public, in passing severe sentences.

It reminds me of an anecdote told of the late Earl of Carlisle. He, too, held a strong opinion as to the reformatory results of prison discipline on the convict class. He thought that ticket-of-leave men were in general a trustworthy set of people, who were mostly converted into good citizens by the sort of penance they had been obliged to undergo. He was talking on this subject one day with Archbishop Whateley, and observed that he should not object to employ ticket-of-leave men as domestics throughout the castle. Then said his Grace,

'Your lordship would find in the course of a week that you were the only spoon left in the establishment.'

My friend Payne might have been wrong in his theory as well as in his practice, but I cannot help thinking that at the present time a maudlin sympathy for the most dangerous classes of the community and the utterances of sickly sentimentality lisped forth against the infliction of corporal chastisement press much too far in the other direction. There are some men as to whose notions of right and wrong there are no means of appealing, except through the sense of bodily pain. The sufferings of innocent people are as much entitled to consideration as theirs. What right can anyone have to claim a larger share of mercy than he has meted out to others? I am afraid we are living in a spuriously humanitarian age. It may, however, be fairly said of Joseph Payne that, when he quitted this world, he took with him a tolerably large amount of capital with which to begin the next.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# CHAPTER XXI.

## LEGAL PROCEDURE.

Sir John Karslake—Legal Procedure—Lord Waterpark—A Murder Case—A Legal Technicality Saves the Neck of the Murderer—The Earl of Cardigan Tried for Attempted Murder—Trifling with Justice—Lord Nottingham—The Statute of Frauds—Voltaire's Opinion of Law—What Seldon Says—Equity—Litigation as a Pleasure—Baron Parke—His Fondness for Ancient Law—Serjeant Hayes's Skits—Serjeant Miller—Anecdote—English Juries and French Juries.

I HAVE before referred to the name of Sir John Karslake, and I wish to say a few words about him, because he was the most popular and charming man that ever practiced amongst us. He was idolized by the profession, and I never heard a word uttered to his disparagement in any portion of his career. He was the very embodiment of manliness, physically and socially. He was very handsome and very tall. Six-feet-four was his height, and I seemed when standing beside him to reach to about the top seam of his waistcoat pocket. A provincial paper, in reporting some

case in which he was engaged on circuit, used these words:

'Sir John Karslake, so soon as the defendant's case was concluded, *rose at great length* to reply.'

As a companion, he was always jovial, cheery, and unpretending. No one seemed to enjoy life more than he did; at all events, no one could impress you with a more thorough conviction of the fact. He always looked upon the bright side of things. He appeared to regard every man as a brother and a friend, and no ill-natured word, even against those who were palpably amenable to censure, ever escaped his lips. He had every means of indulging in the rational pleasures of life within his grasp, and up to a late period he never missed the opportunity of taking advantage of it. As Attorney-General, he of course made a very large income officially, and his practice independently was very extensive.

I have entered into these details with a view of contrasting his capacity for enjoyment during the greater part of his existence with what the world would regard its sad and melancholy close; but perhaps the world might be mistaken. The toil and labour of office proved too much for him. Thoroughly conscientious in the performance of his duty, he wore himself out in fulfilling it. His health began to give way, his sight failed

him, and he became totally blind. I have sometimes met him when he has been walking arm-in-arm with a friend or his clerk, and, when I have accosted him, it painfully impressed me when I heard him say he knew me by my voice, but he could not see me. Yet his conversation conveyed no sense of suffering either mental or bodily, it was as bright and vivacious as ever. At length softening of the brain resulted, and his mind became sensibly affected. I never saw him after that, but his clerk has told me that he never lost his cheerfulness or good-humour. What his disposition had been throughout his life, so it continued to the end—his geniality and kindliness never left him. What would once have been regarded by him as the direst calamity that could befal one of his buoyant temperament, when it arrived, was borne by him not only with patience and resignation, but without any apparent diminution of his normal content and happiness.

It shows that, when our circumstances change unfavourably, our minds change with them, and we are endowed with strength to bear with equanimity what we once considered ourselves incapable of enduring. One of the most valuable gifts which nature has bestowed upon suffering humanity is that of adapting ourselves to circumstances, and of speedily reconciling ourselves to the in-

evitable. And thus are the ways of God to man vindicated. I say this in no pharisaical spirit, I merely refer to it as a psychological fact of which all of us have had more or less experience, but I never knew a more striking illustration of it than in the career of Sir John Karslake.

He was a little over sixty when he died. He was a victim of duty—perhaps one of the last, merely from his known temperament, that his friends would have supposed would have been its sacrifice.

I have of course seen many changes in the law since I entered the profession, but very many more in its practice and administration. On my first acquaintance with it, the greatest strictness was required in the formal machinery by which a cause was to be brought to trial. The pleadings professed to be a sort of logical process by which one or more specific and simple issues were presented to a jury for them to decide; it was not, however, the logic of the schools, but a system formed on narrow and arbitrary precedents, which must be followed with the most rigid exactness. Technical meanings were given to certain words and sentences which, by an experienced lawyer, after years of hard study, were well understood, but to other people of common-sense they were quite unintelligible. *De injuria*, giving colour,

imparlance, and many other such quasi doctrines, I am not cruel enough to torture the reader by endeavouring to explain. It would take many pages of letter-press to give him even a misty notion of when they were available, and when their absence would be destructive. But the prescribed formula must have been adopted where applicable, since the slightest infraction of the rule would be fatal. Powers of amendment in those days were very limited. A mistake made by either party in any portion of the pleading would rise up in judgment against the defaulter, when or after the case came on for trial, unless objection had been taken to it at the time it was committed by a formal demurrer, and then the question was argued before the full court, and its decision obtained. Such decision was thus impressed with the stamp of legal and official sanctity; it became a binding precedent, and could not be afterwards contravened, unless, indeed, it was reversed by a higher authority.

No single judge could interfere between the parties by taking cognizance, at the instance of one of them, of the technical delinquency of the other, but they were left to their own devices, and ultimately they would take the consequences of any mistakes. Whatever was done must be effected in one particular way, almost extending

to the dotting of the i's and the crossing of the t's, and, if not done in that way, they could not be effectually done at all. Within certain fixed and defined limits, the pleader was allowed to be as inconsistent as he pleased. The steps leading to each particular issue must indeed have been consistent and logical, but the several issues need not have been consistent with one another.

There was said to be an American case, where an action was brought against a defendant for damage done to a valuable china bowl, which had been lent to him by the plaintiff, and returned to the latter broken and disfigured. To this the defendant pleaded firstly, that the bowl was broken when he received it; secondly, that it was whole when he returned it; and thirdly, that he never had the bowl at all. Our practice was, in former times, not very dissimilar; for a defendant might have, in many instances, expressly denied doing what was alleged against him, and have then proceeded to urge various excuses for having done it. This was sensible and rational enough, as it did no more than put the plaintiff to prove, in the first instance, the facts of which he complained. After all, it was not so much the system itself that was objectionable, as the petty despotic accuracy which was held to be indispensable. I will mention a few noted instances of this from

the books. The *two* sheriffs of London constituted together the *one* sheriff of Middlesex,—probably by an error of some bungling clerk, a document in a cause contained the word sheriffs of Middlesex, using the plural number instead of the orthodox single one, and the proceedings were set aside. In some case in which Lord Waterpark was a party, his name was spelled *Waterfork*, and a similar result followed. It was wittily said of such puerile decisions that it was very much as if a man, having got fairly into a court of justice, was summarily kicked out of it because he had entered by the wrong door.

In criminal cases, this enforcement of accuracy in the most unimportant particulars frequently led to glaring defeats of justice. I perfectly well remember a case which created considerable sensation in the year 1827. A man named William Sheen was tried for a murder of the most brutal and unnatural description. He had deliberately cut off the head of his own child with a carving-knife. The evidence adduced against him proved the charge beyond all dispute; but the name of the child, who was illegitimate, was alleged in the coroner's inquisition (for it was that on which he was first tried) to be Charles William, and there was no substantial proof that that was his real name, or one by which he was habitually known.

The prisoner was acquitted by direction of the judge. He was again tried on an indictment which varied the appellation of the little victim, in several counts, but it was held by Justices Burroughs and Littledale that, having been acquitted upon a trial where his life had once been in jeopardy, he could not be tried again on the same charge; and of this latter decision no complaint can be made,—it is in accordance with the present practice. The proved, though unconvicted murderer, was set at liberty, and was often seen afterwards in the neighbourhood where the crime was committed, and where I resided, getting his living by selling vegetables from a barrow which he wheeled about the streets.

A somewhat similar result occurred in the year 1841, although amongst persons in a very different rank in life. The Earl of Cardigan was tried for shooting at Captain Tuckett, with intent to murder him. The indictment was found at the Central Criminal Court, but, as the accused was a peer of the realm, it was removed into the House of Lords. It arose from a duel that was fought at Wimbledon, between the two persons above named, and in which Captain Tuckett was wounded. Lord Denman presided as Lord Steward; the Attorney-General, Sir John Campbell, prosecuted; and Sir William Follett defended

the accused. The injured man was described in the indictment as Charles Harvey Phipps Tuckett. It was proved that *a* Captain Harvey Tuckett, an officer in the army, was wounded by Lord Cardigan at Wimbledon, but his other name was not known to the witnesses who established that fact. An agent in London proved that he paid to *a* Captain Charles Harvey Phipps Tuckett the pension due to him, as an officer in the army, from time to time, but he knew nothing as to his being the same man who was wounded by the defendant. It was contended that as there was no evidence to connect the actual duellist with the person mentioned in the indictment—and besides there might be two individuals bearing the same name—the defendant must be acquitted, and the argument was held valid. Thus the accused earl was acquitted by his peers.

The form of giving their votes was this, each peer in his turn laid his hand upon his heart, and said, 'Not guilty, upon my honour.' But there was one exception to this phraseology. The Duke of Cleveland seems to have been more technical and punctilious than his brethren, for he said, 'Not *legally* guilty, upon my honour.'

I need hardly say that such trifling with justice as I have just recorded has to a great extent been superseded, and the legislature has given to the

authorities powers not only of amendment, but of interference with the proceedings in an action or indictment that might satisfy the cravings of the most autocratic official. That peremptory insistance on parties following the precise forms laid down for their observance might have been easily mitigated, and a medium course taken between excessive strictness and extreme laxity.

I have said before that parliament is always disposed to rush into extremes. It takes a long time to open its eyes to the palpable anomalies and absurdities of any particular system, but when it is once thoroughly wide-awake and resolved on action, it rushes with headlong haste to abolish advantages, as well as evils, by destroying the entire system of which the latter form perhaps only a trifling part. Formerly the complaint was that the Bench had not sufficient control over procedure. Now, I venture to think, the objection is entirely the other way. At present not only the judges, but the masters and registrars of the courts, have infinitely more power of interfering with and altering the progress of a cause than could have been exercised half a century ago by the Lord Chief Justice of England. Before the preliminary process it has to go through has reached maturity, it has to confront perhaps the manipulation at various times of half-a-dozen dif-

ferent judges or masters, each acting on his own individual opinion of what is justice; so that I believe it not infrequently happens that a cause is tried on issues which neither of the contending parties contemplated when litigation between them commenced.

No written law can provide for all the various contingencies that may by possibility come within it. The statute of frauds passed in the year 1676 was thought to be so comprehensive and so admirably drawn, that Lord Nottingham declared that every line was worth a subsidy. He supposed that he who ran might read and understand it, and that every case which might possibly arise could be easily decided by the light of the Act alone. It is a singular fact, however, that no act of parliament ever gave rise to so much litigation. The meaning of every line and every word has been most vigorously fought out in the courts of justice, and, although more than two hundred years have elapsed since the Act was passed, even at the present time you cannot take up a volume of recent annual law reports, without finding some concurrence of circumstances detailed, that raised a doubt as to whether or not they came within this same statute of frauds. Of course every law requires to be interpreted by some supreme authority whose decision upon it shall be final, and

which every member of the community is bound to adopt.

But there is no necessity for several judges giving authoritative judgments at several stages of a cause in its progress towards its final destination, each of them deciding without the concurrence of the rest with respect to matters that may be most material to the interests of one or the other of those interested. I repeat that I think it would be far preferable to allow the parties gradually to frame the issue for themselves—of course according to some fixed, reasonable, and definite rules, any breach of which they would of course respectively be answerable for in the end.

Voltaire says: 'The most valuable right of humanity is to depend upon the law only, and not on the caprice of man.' But, while we must have one authorised interpretation, why should we have so many independent interpreters? Formerly we had the deliberate judgment of several judges combined; now we have a multiplicity of judgments pronounced by judges sitting alone, and oftentimes differing from one another in opinion upon a similar state of facts. It is true that in many cases the parties may appeal, but this necessarily involves expense and delay.

Selden remarks that to decide in equity accord-

ing to the Chancellor's conscience is like making a standard of measure, the length of the Chancellor's foot. In his day the Chancellor's discretion was much less fettered than that of the equity judges is now. Equity is administered at the present day very much in the same manner as the Common Law—that is, by precedent; but in general every step in a case is at least taken before the same judge, and not by a series of chance tribunals that are strangers to its course.

In making these observations, I only wish to express a humble opinion that the exercise of a judge's discretion should by law be as limited as possible, and that he should be bound in general, though not as stringently as in former times, to fixed and certain rules, which, if the suitor disobeyed, it would be at his own risk. Divested of its frivolous empiricism, I venture to think the ancient system would be preferable to the present one.

It must not, however, be supposed that, in what I have said, I am seeking to cast the slightest reflection on the judges themselves. The affectionate regard I have for them which an intimate knowledge and experience of many years has engendered, would preclude my harbouring such a thought. I am quite sure that, in performing the duties I have referred to, they have always acted

purely and conscientiously. They have only wielded an authority that the legislature had cast upon them; but I venture to believe that there are some of the rank who would be glad to get rid of the power, as well as of the onerous responsibility attached to it.

Suggestions are often made that the law as settled by decided cases ought to be codified and reduced to a compact and portable shape, instead of being scattered through numberless volumes of reports. This reminds me of the old lady who, going into a bookseller's to purchase a Bible, insisted on its being of small size, that she might carry it in her reticule, but, inasmuch as her sight was getting impaired, it must be of very large print.

The law *is* in fact codified, as far as it usefully can be, in many text books which contain the decisions that have been given on multitudinous disputed points. But these compendia give you, in general, only the bare decision. You must see the report of the case itself, as well as the precise reason given for the judgment, in order to ascertain whether the facts coincide with those on the law respecting which you seek to be enlightened. It is obvious that the greater the number of cases that have been decided on any particular statute, the greater is the chance of your finding one that

may be identical, or may nearly approach your own, and if you are successful in your search you may act with tolerable confidence.

No doubt, great advantage would arise from codifying the statutes on any particular subject, by repealing all the earlier ones relating to it, and consolidating them into a single Act. This was done by the Merchant Shipping Act, the Railway Consolidation Acts, the Building Acts, and many others. But there are several heads of law that would be much benefited by similar treatment. As it is, a modern statute often refers to a dozen others; it repeats a section of one, retains a section of another, amalgamates itself with portions of several, but never condescends to do more than mention them by the year of the reign in which the Acts were passed and the numerals of the sections it means to deal with; so that you have to dive into many volumes before you can piece the fragments of law together, so as to get a general view of its purport. All this must seem very absurd to anyone but a legislator. It is very much as if you employed an architect to design a mansion for you, and, instead of giving you a prepared plan and elevation, he should inform you that the portico would be like that of a house in Eaton Place, the windows like those of

the upper part of a shop in the Poultry, while the decorations would be after the pattern of a very elegant frontage in Bloomsbury. You would have to wander half over London, before you could get a notion of what your establishment would resemble, and you would get but a faint one even then.

I hope I may not be considered too technical by the general reader, or too presumptuous by my learned friends, for venturing to criticise the present system of legal procedure. I am perhaps too apt to act upon the motto 'Stare antiquis,' and I have so much sympathy with the members of my profession, especially the younger ones, that under no circumstances would I wish to curtail their privileges or to check the desires of the community to go to law, as often as they please, or—to speak hibernicè—even oftener. But I know that nothing I could say, or the legislature can do, will prevent people from revelling in that luxury. An action is generally commenced by a plaintiff when he is in a passion, and, however sorry both parties may be for continuing the warfare, pride will not allow either of them to retreat. Singular, however, as it may seem, I know several persons who go to law for the mere love of the thing; they are never easy but when they have

some stake as parties in a court of justice. It is like Epsom to a sporting man, or Monte Carlo to a gamester.

I heard of a man who boasted of his good fortune in having won every law-suit he had been engaged in, except seventeen. Swift tells us that Gulliver's father was nearly ruined by being plaintiff or defendant in several chancery suits: but his ruin was complete at last, by his getting a decree in his favour with full costs. Probably he meant that getting a decree for costs, and getting the costs themselves, are not precisely the same things.

Baron Parke, afterwards Lord Wensleydale, was the great stickler for the system of law and practice under which he was nurtured. He would not allow a feather of its plumage to be ruffled; he treasured up all the ancient decisions, and treated them with the utmost reverence and respect; the harsher the language in which they were propounded, the better he liked them. I believe, if he could have had his way, he would have made Norman French the current language of the British Isles, and would have scouted the dictionaries of Johnson and Webster as mere Moabitish innovations. It is related of him—though I do not vouch for the truth of the story—that once he was summoned with the other

judges to hear a case argued in the House of Lords, and to advise their lordships on the subject. Whether it was the heat of the weather, or the nature of the topic that was being discussed—which was one of pleading—is not mentioned; but in the midst of the argument he was suddenly seized with a fainting fit. Cold water, hartshorn, and other restoratives were applied, but they had no effect. At length an idea occurred to one of his brethren, who well knew his peculiar temperament, and he immediately acted upon it. He rushed into the library, seized a large musty volume of the old statutes, came back and applied it to the nostrils of the patient. The effect was marvellous. He at once opened his eyes, gave them a slight rub, and in a few seconds he was as well as ever.

Serjeant Hayes wrote a very amusing *jeu d'esprit* upon the Baron, which illustrates his fondness of ancient law. It was never I believe printed, but, although I have often heard the particulars related, I am sorry I cannot recollect them as accurately as I could wish. At all events the following will give an idea of the brochure:

There is in Coke's 'Reports,' in the time of James I., a case called the 'Six Carpenters' case,' and for the purpose of understanding the joke it is only necessary to mention that it was an action

of trespass brought by a tavern-keeper against these six individuals. It seems they entered the tavern and refreshed themselves with food and wine for which they paid, but they ordered more, for which they peremptorily refused to pay, and the question was whether they were in law *trespassers* from the moment they entered the premises, or became such merely from the time of their declining to pay for the second series of articles supplied; and it may be interesting to some people to know that the latter proposition was held to be the right one. Now, it was said that there was something about this case that throughout his life had sorely troubled the Baron's mind. He was of course bound to reverence the decision, coming, as it did, from ancient mouthpieces of the law; but there was an absence of one little fact from the 'report' that rendered it not quite so clear as he devoutly wished it had been. He is then represented as having died and gone down to Hades.* Never having been able to find anybody on earth who could solve the difficulty as to whether the little fact had or had not been proved, he thought he had now a fair chance of

* It must be remembered that Hades is according to many authorities not identical with another unpleasant region that begins with the same letter, and to which it would be disrespectful, even in jest, to suppose that a learned judge could ever be consigned.

getting his doubt removed. So the first thing he did, on arriving at his destination, was to enquire for the six carpenters. For a long time his efforts to discover them were without avail; but at length he was referred to a certain public-house, which, true to their mundane habits, they frequented, and there sure enough he found them; but they were so drunk that it was useless to attempt to get any information from them on the first interview; so he made an appointment with them for the next evening. The parties again met, and the Baron, after supplying his companions with liquor, begged them to relieve his mind of the uncertainty that had long beset it. But each of them gave such a different account of the matter, and they became so contradictory among themselves—using language, moreover, far from complimentary to law and lawyers—that the Baron got disgusted. As to the little fact, however important it might be to him, it was far too small to have retained a place in their minds, even if it had ever had a lodgment there. The poor Baron retired from the conference in despair—and the Serjeant pictured him as still pining at the thought that he had not discovered the missing link.

Serjeant Hayes was famed for the skits and jokes he contributed to the profession, good-

naturedly hitting off the peculiarities of his contemporaries, one of whom—Serjeant Miller—he commemorated in a copy of verses, which were very humorous and clever. I must again express regret at not remembering a single line of the poem; but the facts it dwelt on may be worth relating as a proof of the ingenuity of the legal gentleman concerned, as well as of the occasional gullibility of that palladium of liberty—a British jury.

Miller—before he became a Serjeant—defended a man for stealing ducks from a pond, and appropriating them to himself. The evidence was to the effect that he was seen to throw stones at the ducks till he had killed them, that he then hooked them out of the water with a stick, and was walking away with several when he was apprehended. The throwing the stones, the hooking out the deceased ducks, and the carrying them off were cheerfully admitted; but the learned counsel (though I am bound to assume so instructed by his client) introduced another actor on the scene. He asked every witness whether he had not seen a large dog in or near the pond. They all answered that they had not. They were then asked whether they would swear that there was not a dog near the pond. This the witnesses declined to do; they could only swear they did

not see one. But it proved enough for Miller to found a defence upon. In effect it was this: that a dog was chasing and killing the ducks, that the prisoner was throwing stones at the dog for the purpose of driving him away. Possibly, in his benevolent design of protecting the ducks, he might have hit one or two of them, and that the foolish witnesses attributed this to felonious slaughter. All he did afterwards was to collect the victims, and was carrying them to the rightful owner, when he was unjustifiably arrested. The great palladium of British liberty proved they were justly entitled to the name, for the prisoner was acquitted, and was immediately set free.

Hayes always vouched for the literal truth of the tale, and I have heard him recite the verses at the mess-table after he had become a judge, and it was received with shouts of laughter, for I need hardly say it was much more ludicrous when told in verse that in prose. In our hours of recreation—it may be noted—we were not the staid, sedate, prosaic persons we are supposed to be when in court.

I believe Miller was the counsel of whom it was related that he successfully defended a man for horse-stealing, although the evidence convinced the judge and everybody in the court that there ought to have been a conviction. When the trial

was over, and the prisoner had been acquitted, the judge said to him,

'Prisoner, luckily for you, you have been found not guilty by the jury, but you know perfectly well you stole that horse. You may as well tell the truth, as no harm can happen to you now by a confession, for you cannot be tried again. Now tell me, did you not steal that horse?'

'Well, my lord,' replied the man, 'I always thought I did, until I heard the speech of my counsel, but now I begin to think I didn't.'

But, if English juries are sometimes to be cajoled by an artful address, French ones are not far behind us in this respect. However, there is this difference between the two: on this side of the channel juries are beguiled by false reasoning, on the other side by false sentiment. I once read in a French journal an account of a trial in which a young female was charged with the murder of her child by drowning it in the Seine. The facts were too clear to be contested, and no attempt was made to question them. But the advocate who defended her had a powerful imagination, and was brimful of invention. He described the prisoner as well born, thoroughly accomplished, beloved by her family and friends, and the idol of all her associates. But she had unfortunately become the victim of a vile seducer,

who treated her cruelly, and, on the birth of their child, entirely deserted her. In spite, however, of his brutality, she was always devoted to him. True, in a paroxysm of grief, she had killed her child, but it was to save it from the temptations and trials of which she herself had been the victim. She had been discarded by her family, and saw her innocent offspring gradually drooping for want of that sustenance which her own most wearing toil failed to procure, and in an agony of despair she committed the fatal act. Having now worked the feelings of the jury to a state of high pressure, he read a letter which he professed was written by her to her betrayer a week before the deed was done. It was full of the most tender and touching phrases, recalling the days of their affection and happiness, but there was not one word upbraiding him with his perfidy and cruelty towards her; she was too high-minded, and her devotion to him too deeply rooted, for that. She was willing to bear her burden, terrible as it was, alone, and only prayed that he might be prosperous and happy. This was too much for the jury; they at once stopped the case, and with tears in their eyes pronounced a verdict of not guilty, amid shouts of joy that rang through the court for some minutes, and which no attempt was made by the authorities to put an end to.

It turned out, however, on further inquiry, that the woman was of the most depraved and abandoned character, getting her living by prostitution, and that the only motive which could be suggested for the murder of the child was that she might escape the trouble and expense of maintaining it.

But the most ludicrous part of the affair was, that the letter which had nearly brought the jury to the verge of apoplexy was an exact copy of one to be found in the 'Dame aux Camellias,' the now well-known novel of Alexander Dumas, junior, but which then had only been given to the public two or three days before, and which, of course, to the jury and to the shouting audience in the court was not likely to be known.

As I am on the subject of French trials, I should like to mention another I read of, where the plaintiff brought an action against some one to recover an estate which had been in the family of the latter for a great number of years. The plaintiff gave some shadowy evidence that the property had once belonged to his relatives, and he was their next-of-kin. The judge asked the defendant how long he had been the recognised proprietor.

He replied, 'Twenty years.'

'How long had your father held it?'

He said, 'Thirty years, at least.'

'And your grandfather?'

'Nearly all his life, for it came to him while an infant,' was the reply.

'Well,' said the official, in giving judgment, 'it seems to me that your family have had a pretty good spell in the enjoyment of this estate, and I think it quite time that the plaintiff had a turn.'

I think it possible that this may be a mere *canard.* I have not the slightest desire to libel the French administrators of justice, but, if I have treated them unfairly, they must admit that I have given them abundant food for retaliation in these pages.

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# CHAPTER XXII.

## PROCESS OF TAKING THE COIF.

Serjeant-at-Law—The Origin of the Coif—Serjeant Allen and Sir Henry Keating, Q.C.—Anecdote—The Position of Q.C.—Lord Bacon, the first Q.C.—Sir Thomas North, Lord Guildford—Difference between a Q.C. and a Serjeant—Number of Q.C.'s—List of Serjeants-at-Law now Alive—Lord Westbury—Lord Cairns—The Ceremony of making a Serjeant—Entrance Fees—Dining—Barristers' Clerks.

HAVING given a detailed account of the genesis of a barrister, it may not be out of place to describe the process of his conversion into a serjeant-at-law, and the status he thus occupies in the profession. It will not be long before there will exist no living representative of the race. If anyone of the few that remain of us succeeds in getting into the next century, he will deserve great credit for perseverance and tenacity. I daresay there will be a formidable struggle amongst us as to who shall be the last man; but perhaps it would be difficult to find anyone disposed voluntarily to relinquish his chance.

The position of serjeant-at-law is undoubtedly

the oldest, and was, until comparatively recent times, the very highest dignity a barrister could achieve below that of a judge. It dates from about the middle of the thirteenth century. Until the year 1875, the judges were invariably selected from that rank, and so strictly was the rule adhered to that even a Queen's Counsel, who had spent half his life under that title, was obliged, on his appointment as judge, to become a serjeant, perhaps the day before he was sworn in as a member of the Bench. The little round black patch on the top of the wig distinguishes a serjeant from the other members of the Bar, and the origin of the mark is said to be this:

By the Canon Law, the clergy were forbidden to resort to any secular vocation, and therefore in strictness they could not act as advocates in a court of justice; but it was a very profitable business, and they did it, in spite of ecclesiastical rule, at a time when discipline was somewhat lax. But a more rigid observance was at length insisted upon, and, not liking to give up the emoluments they had been in the habit of enjoying, they continued to do clandestinely, what they could not do openly. So to conceal the tonsure, which would at once have shown them to be priests, they covered the tops of their heads with a small coif or cap—originally white, but it after-

wards became black—and went on pursuing their worldly avocations as merrily as ever. I presume it was very wicked, but it was very remunerative, and that was a consideration which the clergy of those times thought was a covering for many transgressions. The coif thus became the outward symbol of the degree of a serjeant, and was worn by them, as may be seen in old portraits, up to the time of the general introduction of wigs among the aristocracy and the upper middle-classes. This necessitated a change in the mode of designating the rank, and a black silk patch on the top of the new head-dress was resorted to as a substitute for the coif, while it still retains the name.

I have particularly referred to the origin of the coif because its meaning is a little misunderstood, as the following anecdote will show:

Serjeant Allen and Sir Henry Keating, Q.C., on leaving the Assize Court at Stafford, were walking along the streets to their lodgings, amicably enough, although they had just been opposed to one another in some case in which a violent altercation had taken place between them. Two men, who had been listening to their wrangle in the court-house, were walking behind them, when one said to the other,

'If you were in trouble, Bill, which of these two tip-top 'uns would you have to defend you?'

'Well, Tim,' was the reply, 'I should pitch upon this one,' pointing to the Q.C.

'Then you'd be a fool,' said his companion, 'the fellow with the *sore head* is worth six of t'other one.'

All the learning and intelligence of the kingdom was in early times monopolised by the clergy, and it is not therefore surprising that they should succeed in obtaining the highest rank that could be conferred on successful advocacy.

The position of Queen's Counsel is of comparatively modern date. The first who bore the title was Lord Bacon—who is always so called, although he never bore that title—but his position had nothing to do with the rank as it at present exists. He acted merely as the Queen's private adviser, while the Attorney and Solicitor General were the advisers of the Government.

No other appointment of Queen's or King's Counsel was made for many years, until Sir Francis North (afterwards Lord Guildford) was so created in the reign of Charles II., and, from that period, the title seems to have grown, and to have gradually assumed its present significance.

The Queen's Counsel will soon have it all their own way, for it is now resolved that no fresh serjeants are to be appointed, although the

existing ones maintain the same rank and privileges they have always enjoyed.

The cause of their decline from their high estate originated in the throwing open the Court of Common Pleas to the whole Bar indiscriminately. Until the year 1846—with a small interval mentioned below*—that court was entirely monopolised by the serjeants. No other member of the Bar could be heard within its precincts, although the former were allowed to practice in them all. But the Common Pleas was considered to be their peculiar region, and when they went into the Queen's Bench or the Exchequer they had to sit in the back rows, unless indeed they had a patent of precedence. By an order made, however, by Chief Justice Cockburn, some time before I became a serjeant, they obtained the privilege of sitting in the front one, in all the courts.

I am often asked, what is the difference between a Queen's Counsel and a serjeant. In the first place, I may state that the former is created by patent and the latter by writ under the Great

* In 1834, merely by a mandate of William IV., the Court of Common Pleas was thrown open to the whole Bar; but doubts began to be entertained as to whether the sovereign had power to do this of his own mere will. The question was at length solemnly argued, and the result was that in 1839 the mandate was held unlawful, and so the serjeants got their own again. But their triumph did not last long, for in 1846 an act of parliament passed, which effectually destroyed their long-established monopoly.

Seal. As to rank, there is no difference whatever between a serjeant who has obtained a patent of precedence and a Queen's Counsel; but with regard to serjeants who have no patent it is otherwise. Theirs is an intermediate grade between Her Majesty's Counsel and the rest of the Bar; so that every newly-created Q.C. takes precedence of an unpatented serjeant, however long he may have worn the coif. The Queen's Counsel always appear in black silk gowns, in and out of term. The serjeants have several additional robes; black cloth in term time, except on saints days when purple cloth was worn, while black silk was the robe out of term at *nisi prius*, which means trial before a jury. A scarlet gown is only worn by them, as I have mentioned before, at the churching of the judges at St. Paul's in Trinity term and at the Guildhall banquet, at the latter of which occasions some of them had always the privilege of attending with the judges. When I became a serjeant, it was *de rigueur* that these habiliments should be worn at the prescribed times, but, shortly afterwards, the rule was gradually disregarded, and latterly black silk has been our only wear in court.

Another distinction is, that the serjeant holds a rank quite independent of the profession, while a Queen's Counsel has no recognised position out

of it; so that, while in general society a serjeant would rank above a Queen's Counsel, in matters relating to the profession, he would rank below him—unless he had a patent of precedence. Then, their relative positions would depend on the date of their respective appointments, and again, the serjeants are also quite independent of the sovereign, while, as I have said before, the Queen's Counsel are always assumed to be in the service of Her Majesty, as her private advisers, though I need hardly say they are very seldom honoured with her confidence.

When I was called to the Bar there were sixty-three Queen's Counsel; there are now about three hundred. It is said that in the multitude of counsel there is safety; were there any truth in the maxim, Her Majesty's enemies—if she had any—would feel rather uncomfortable at contemplating the present array of her defenders. The truth is, the title of Q.C. denotes a mere rank and precedence at the Bar; but the fact of their being nominally servants of the Queen is still important, and a significant instance of it is this, that, as the Queen is supposed to institute the prosecution in every criminal case, her counsel cannot take part against her by defending a prisoner without her permission. This, however, is now always good-naturedly given when applied

for, and a license is granted, which costs, however, between two and three guineas. But it was a matter of considerable importance in former times, for the Crown could always prevent a political offender from availing himself of the services of one of the principal branches of the profession. But the serjeants were under no such ban, and were always found bold and courageous enough to defy the tyranny of their rulers, and to stand forth as the defenders of the liberty of their oppressed fellow-subjects. This is sometimes urged by those who think that the rank of the serjeant ought to be still maintained as among others a powerful argument for the retention, but I confess I do not agree with them. It may be a sentimental reason, but scarcely a substantial one. It would be neutralised at once by getting rid of the absurd fiction that Queen's Counsel are really what the name imports, and by allowing them to defend in criminal cases without a royal licence. They would then be as independent as the serjeants, and the loss of the paltry fees paid by an alleged delinquent for the privilege of inducing a servant of the Queen to betray her interests might easily be recouped to the State by the most common-place Chancellor of the Exchequer.

When the exclusive right of practicing in the Court of Common Pleas was taken away from the

serjeants—and I cannot help regarding its existence as an anomaly—their *raison d'être* ceased. They were placed in this invidious position, that those of the Bar who had hitherto looked up to them as leaders—should they become Queen's Counsel—reversed their relative positions and led them. I can only say that from 1865, when I became a serjeant, until 1874, when I obtained my patent of precedence, I felt deep mortification at finding juniors to me taking a leap over my head on being created one of Her Majesty's counsel. It had for some time been remarked that no more serjeants would be made, but the statute of 1875 rendering it no longer necessary that a Common Law judge should possess the coif at the time of his appointment pretty well settled the question. Of course they were all serjeants at that time.

There were several expectant judges and three practicing barristers created serjeants after me. The latter were Cox, Sargood, and Sleigh, all now deceased, as indeed are several of the former. At the time of the passing of the above act, there were about twenty-one of each class—that is, of judicial and non-judicial members. There are now eleven of our body either on the Bench or retired from it, and six who are still supposed to be practicing ser-

jeants, although I believe most of them have ceased entirely to follow up the profession.*

As long as the Court of Common Pleas was guaranteed exclusively to the serjeants, that grade was not only useful, but necessary; but I repeat that, when the whole Bar was let loose upon them and ravaged their territory, that necessity ceased altogether. The truth is, the lavish way in which

* The following is a list of the serjeants now living, with the dates of their assuming the coif. I need hardly say that the judges of the Exchequer were called Barons, while those of the Queen's Bench and Common Pleas were called Justices. But this distinction is now abolished, and the judges of the Divisional Courts are all justices. The two Barons mentioned below are therefore, like the serjeants, the last of their race:

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|---|---|
| Lord Bramwell (retired Baron) ... ... ... | 1856 |
| Lord Blackburn (retired Judge) ... ... ... | 1859 |
| Lord Esher (Master of the Rolls) ... ... ... | 1868 |
| Sir James Hannen (President of the Divorce Court) ... | 1868 |
| Sir William Grove (retired Judge) ... .. ... | 1872 |
| Honourable George Denman (acting Judge) ... .. | 1872 |
| Sir Charles Pollock (acting Baron) ... ... ... | 1873 |
| Lord Coleridge (Chief Justice) ... ... ... ... | 1874 |
| Sir Willlam Field (acting Judge) ... ... ... | 1875 |
| Sir John William Huddleston (acting Baron) ... | 1875 |
| Sir Nathaniel Lindley* (Lord Justice) ... ... ... | 1875 |
| Serjeant George Atkinson ... ... ... ... | 1854 |
| Serjeant Frederick L. Spinks ... ... ... ... | 1862 |
| Serjeant Alexander Pulling ... ... ... ... | 1864 |
| Sir John Simon (patent of precedence) ... ... | 1864 |
| Serjeant Henry Tindal Atkinson (County Court Judge) | 1864 |
| Serjeant B. Coulson Robinson (patent of precedence) | 1865 |

* The last serjeant created.

the office of Queen's Counsel has been bestowed in recent years has materially diminished its value as a distinction. At all events, there is little reason to fear that there will not be leaders enough in profusion left to satisfy the tastes of the most fastidious clients.

The power of conferring the coif rested—in fact, still exists—with the Lord Chancellor, but he never exercised it, except at the recommendation of the Chief Justice of the Common Pleas. When I applied to Chief Justice Erle for his recommendation, he wrote me a very kind letter stating that his relations with the Chancellor were so strained that he had come to the resolution not to make any further applications to him of any kind. He said he was very sorry to refuse me, but he could not submit to the rebuffs he had received from Lord Westbury on more than one occasion. However, in less than a fortnight I received from him another note, saying that he had thought over my application, and did not think I ought to suffer on account of any private grievances of his own, and that he would at all events make an exception in my favour. Anyone acquainted with the Chief Justice would recognise this plea as thoroughly illustrative of his character. The recommendation was given, and I shortly afterwards obtained the coif.

It is somewhat singular that, subsequently when I made my application to the Chancellor (Lord Cairns) for a patent of precedence, I received a communication from his secretary (for his lordship knew nothing about me, since I was scarcely ever in the Chancery Courts) to the effect that he and the ex-chancellors had arrived at the conclusion that no patent of precedence ought in future to be granted to a serjeant. Within three weeks, however, I received another letter from the secretary stating that Lord Cairns would make an exception in my favour, and would recommend Her Majesty to grant me a patent, but that it would be the last.

I cared little for the concluding words of the epistle, but rejoiced in the tenor of the earlier part, since it relieved me from the annoyance of seeing my juniors from time to time taking rank above me. I always cared much more for status in the profession than for its emoluments, and in this case rank alone was involved.

On the creation of a serjeant, a number of gold rings (about twenty-eight) had to be bestowed by him on several persons of different grades—the Queen, the Chancellor, the judges, and I think the Masters of the Common Pleas. Even the chief usher of that court received one, but it dwindled down to a hoop of not much greater breadth than

a curtain ring and about one tenth of its thickness. Her Majesty's ring was a very massive affair—nearly an inch long—with enamel in the middle and massive gold ends; on the former was engraved—as indeed was the case with all of them—a motto specially chosen for the occasion. The one I selected was 'Ex Sese,' which my friends kindly suggested was intended for 'Ex. C. C.,' as a memento that I emanated from the criminal courts. The Chancellor's and the judges' rings were about one third of an inch in breadth, but luckily for me not very thick—as I had to pay for them. The greater number I never saw, for the goldsmith always undertook to distribute the gifts to those who by immemorial custom had a claim to them. It was only the Queen's, the Lord Chancellor's, and the colt's of which we had personal inspection. I may state that the colt is generally a young professional friend, who attends the new serjeant on his being sworn in before the Lord Chancellor, and who is an ancient and necessary appendage to the ceremony. He walks in *(pone)* behind his principal, and it is said that the term 'colt' is merely a parody on that Latin word.

The ceremonial itself is very simple. You go in full official dress with your colt before the Chancellor in his private room, where the Queen's writ conferring the rank upon you is read. The oath of

allegiance is then administered by the Chancellor; after which you kneel down before him, and he pins the coif (consisting of a patch of black silk with a white crimped border) on the top of your wig, and you become a Serjeant-at-Law. You are henceforth addressed by the judges who are serjeants as 'brother,' but the relationship ends there; we never take the same liberty. In court we address them as 'my lord,' and in private as 'judge.'

On rising from your knees and receiving the congratulations of the Lord Chancellor, the colt advances and presents the Queen's ring to the Chancellor, requesting him to beg Her Majesty's acceptance of it in the name of his principal, another is presented to the Chancellor, and a third is kept by the colt as his own perquisite.*

The next thing to be done was to get yourself proposed as a member of the mess at Serjeants' Inn—that is, if you wished it, which of course every newly-made serjeant did. But it was not compulsory, as I shall presently show. There were

* On becoming a serjeant, your connection with your ancient Inn of Court entirely ceased. If the creation took place during term, a breakfast was given in hall, and the bell solemnly tolled you out of it, in token of your being dead to the society in future. After we sold our Inn, however, the Benchers of the Temple gracefully restored to us the right of dining in hall, as well as the use of the library. Of the former privilege I have declined to avail myself, but the latter I have of course regarded as a most acceptable boon.

formerly three different clubs or societies of serjeants, each called Serjeants' Inn. One in Holborn, near Hatton Garden, which has, I believe, for centuries ceased to exist; another in Fleet Street, which, although bearing the name, has for very many years had no connection with the serjeants, in fact. The only recognised Inn of late years was that in Chancery Lane, the whole of which was sold a few years ago, and the proceeds divided amongst the serjeants. Of this sale I shall have a few words to say presently. The property consisted of a long range of buildings in Chancery Lane, let out in offices, an ancient and not very picturesque hall, a remarkably handsome dining-room, a reading-room, spacious kitchens and cellars, and other conveniences adapted to an ordinary club-house.

On being elected to the mess a practicing serjeant had to pay an entrance fee of three hundred and fifty pounds; a judicial one, that is anyone so created as a preparative to a judgeship, paid five hundred pounds, and, for some time after my joining, every member paid fifteen pounds a-year as commons, but this sum at last dwindled down to zero, and we paid nothing for our board or for the other conveniences the Inn afforded us.

The large hall was never used for any other purpose than for dining in it on the first and last

days of term, when there was always a large attendance of judges and ourselves. On these occasions our clerks dined with us, sitting at the bottom of the table, one of the few remaining instances of the old custom of the retainers of a household taking their meals at the same table with their chief and his family, being seated below the salt. When we had taken our places at dinner, the clerks marched in, each carrying before him a large mug of beer with a small loaf on the top of it; but, although the old form was kept up, they got nearly as good a dinner as we had ourselves. After grace they marched out as they had marched in, and we were left to discuss any matters of business that might arise connected with our society.

I trust a few words hitched in here regarding barristers' clerks may not be thought out of place. They are in general a praiseworthy body of men, not having the rank of merchants' or solicitors' clerks, because no special knowledge of any peculiar kind is expected from them. All they have to do is to attend their employers in court and in chambers, and receive and keep an account of fees. But each has this peculiar incentive to assiduity in the performance of his duties, that his pecuniary interest is identical with that of his principal. If the income of the latter from professional work increases so must his, for, as I have

already said, whatever fee the barrister is entitled to, the clerk gets a proportionate amount in addition for himself.

It is well known that the Bar affect to hold no communication with their clients regarding money matters. Financial arrangements are entirely carried out by their clerks. As may be supposed, this at first involves no great labour on the part of that official, who is generally young when taken into the service. But as business increases, it may easily be imagined that the well sustained fiction of barristers disdaining to trouble themselves about their fees, places great temptations in the way of their humble financiers. It gives the latter many opportunities for peculation, if it were only in denying the receipt of fees, that have long since been paid.

Those who, in spite of these facilities for evil doing, have never succumbed to them, but have grown old in the service of their masters, and have throughout maintained a character for honesty and diligence, should, I think, be treated otherwise than as mere dependants; and I am sure they have little to complain of on this score. It would be invidious to mention names, but I know many clerks to judges and distinguished leaders who have faithfully served the same individuals from the time the latter entered the

profession. It is true that these have received their guerdon in a pecuniary shape, but I am acquainted with others who, in consequence of the moderate practice of their employers, have received but slender annual profit for their services, where the same result has ensued. For such men I entertain the greatest respect, and whenever I meet them I endeavour to show it.

# CHAPTER XXIII.

## SERJEANTS' INN—CONCLUSION.

Symposia at Serjeants' Inn—The Banquetting Hall—The Round Table—Serjeant Cox—His Generosity—The sale of Serjeants' Inn—Sir Robert Collier: Lord Monkswell—Mr. Gladstone—'The Colliery Explosion'—The Ewholme Rectory Scandal—The Last of the Serjeants—Smithfield Fair—Turnpike Gates—The Press Gang—Serjeant Busfuz—Dickens—'Pickwick'—Paganini—A Few last Words.

I RETURN to the subject of our symposia at Serjeants' Inn. On ordinary occasions we dined in our banquetting room upstairs—a very lofty room, hung round with portraits of ancient and modern judges, all of which were, on our parting with the establishment, presented to the South Kensington Museum. On one side were three large arched windows, each pane bearing the arms of a judge very beautifully designed in stained glass.

We sat, when our numbers would permit of it, at a round table, which at its smallest dimensions would accommodate eight persons; but it was very expansive, and, by means of curved segments

added to its outer rim, it could be made to comfortably seat twenty-two. Round the room in a double row of separate panels were ranged the coats-of-arms of every serjeant that had been created for the last one hundred and fifty or two hundred years. These relics excited considerable interest when the property was purchased by our brother Cox. Many peers and other descendants of deceased judges besought him to let them have the shields of their ancestors, and I believe he in every instance complied. Mine was the first to come down from its comparatively modern resting-place. Two or three of us, of whom Cox was one, were dining together and asking what was to become of these interesting emblems, and whether their removal would disfigure the walls. Leave was given to try the experiment, and I suggested mine as the first victim of displacement. Our butler was sent for and told carefully to remove the shield. It proved to be fastened only by two small tacks, and not the least disfigurement to the panel of the wall could be detected. I thought it a pity that it should be replaced, and begged Cox to let me carry it away. He readily assented, and I have it now, as the sole outward and visible sign of my connection with our venerable Inn.

A great deal of adverse comment was made on

the serjeants selling their Inn and dividing the produce amongst them, the insinuation being that it was public property to which they had no exclusive right. The scandal arose, as most popular scandals do, from the absolute ignorance of the public as to the real facts of the case. It is said that scandal travels round the world before truth has had time to draw on its boots.

It often happens that, however clearly and convincingly such calumnies have been refuted, they are as vigorously persisted in as ever. We sometimes witness such pertinacity in politics, and that even on the part of the most distinguished practitioners in that line. A lady declared that whenever she heard damaging reports of the doings of her most particular friends, she always hoped for the best, and believed the worst. I am afraid the public generally act upon the same principle; perhaps, in this instance, it was misled by what seems to have been a general impression, namely, that, to render the title of serjeant complete, it was necessary that he should become a member of Serjeants' Inn—that it formed, as it were, part of the ceremony of induction, and that by conferring the rank the Government created a temporary interest in the funds of the Inn, which ceased on the incumbent's death and reverted to the state. This was an egregious error. The Inn

was a voluntary association, like any other club, which a serjeant might join or not at his pleasure, without either course in the slightest degree affecting his newly-acquired rights and privileges.

That membership was almost invariably sought was quite natural, but has nothing to do with the necessity. Even within my career at the Bar, I can refer to two cases which completely illustrate my position. Not long after I was called, a newly-made serjeant was proposed and elected to the mess, but on the usual condition, that he paid the prescribed fee on admission. But the fee was never paid, and he never became a member of Serjeants' Inn; yet he practiced for many years as a serjeant, and no objection was ever raised to his doing so.

The other case was a more notable and more important one, inasmuch as it was connected with the much discussed incident of what was called the Colliery scandal. An act of parliament had passed, creating certain paid judges, called the judicial members of the Privy Council, and it was expressly enacted that such officials should be selected from the Common Law Bench. The object of course was, that they should thus have acquired considerable experience of their duties in that character. The Act passed in 1871, and as the liberal ministry were anxious to provide for

Sir Robert Collier (not long ago created Lord Monkswell and since deceased) who, as Solicitor and Attorney General, had for years done good service to the country, Mr. Gladstone, in defiance of the clear meaning of the statutes, appointed him a judge of the Common Pleas for a few days—and he was then transformed into a judicial member of the Privy Council. The proceeding created great excitement throughout the country, and it sometimes got the name of the 'Colliery explosion.' It recalled, too, the recollection of another similar high-handed transaction, which went by the name of the Ewholme Rectory scandal. Chief Justices Cockburn and Bovill strongly protested against it. Votes of censure were moved in both Houses of Parliament, but without success. The fact was, the ministry were much assisted by the fact that Sir Robert was singularly popular with all classes. No one could deny either his competency or his desert. He was a great favourite with the Bar, who took therefore little part in the controversy; they were not sorry to see their excellent friend placed—even by the expenditure of a little chicanery—in so well merited a position.

But now I will proceed to show the connection between Sir Robert Collier's case and what I was saying about Serjeants' Inn. To take the higher appointment, it was necessary that he

should first be created a judge, and as the law then stood it was necessary that he should be made a serjeant previously, but it was not essential that he should be a member of Serjeants' Inn; and in fact he never was one. He was of course quite willing to join the mess, and pay the joining fee; but some of his more intimate friends thought it somewhat hard that he should pay five hundred pounds for the two or three days in which he would hold an office to which alone serjeantry was specially applicable; and it was unanimously agreed amongst us, that he should be informed that he was not expected to join the Inn. There the matter ended; he did not become a member, but nevertheless he remained a serjeant to all intents and purposes.

It turned out to be a rather short-sighted policy on the part of those who had advised his exemption, for, had he joined us in the ordinary course, he would, on the sale of the inn, have received nearly three times as much as he had contributed to our fund. But, at that time, circumstances had not transpired to render a division necessary, or even thought of.

That Serjeants' Inn was a private club, and that our funds were derived from private sources, may surely be sufficiently established from this, that the fifteen judges would never have acted

as they did if there had been a scintilla of proof, or even of suspicion, to the contrary. There was not one of the serjeants who did not deeply regret the necessity of parting with our venerable hall and its appendages, but not a voice was raised against our right to proceed to a partition. With the certainty that no more serjeants would be created, judicial or otherwise, and that our income of £1,500 or £2,000 a year would thus be cut off from us, it was impossible that the establishment could be maintained on the same liberal scale as of yore; we should be gradually dying off, like the members of a tontine, until the property ultimately vested in the survivor to do as he pleased with, for there was no one else who could have the slightest claim to it.

Even in this confiscating age, the public are not disposed to do injustice wilfully. Interested and designing men instil into the masses heterodox ideas with regard to the Tenth Commandment, that very soon lead to an infraction of the Eighth. They seek to hallow their suggestions by describing the process 'as a restitution of public rights.' I believe that, at no very distant period, at Assizes and Sessions, we should have designated it by a less complimentary name. An ancient definition of one of the symptoms of holiness was 'stealing leather to make poor men's

shoes.' The political theory I have referred to seems very like it.

It may perhaps be thought by some, that I have dealt at too great length on the topic of the serjeants and the incidents of their being. If so, it must be put down to the garrulity of age. I may say that I never seem to arrive at the consciousness that I am older than I used to be, except when I venture within the precincts of the new Courts of Justice in the Strand. I do this but very seldom, and am always obliged to ask my way about them. I for very many years never found myself in Westminster Hall without receiving a kindly greeting from every be-wigged fellow-creature I encountered. I never enter its modern, and to me most unwelcome substitute, without meeting numbers of young gentlemen in forensic costume, who stare at me and, without accosting me, pass like the Levite on the other side. I always get a momentary impression that I have received a personal slight. I might just as well be labelled, '*Cave canem*,' or 'Beware of the paint.' It always makes me dyspeptic, and compels me sometimes to rush home and take a dose of Gregory's powder to restore tone to my system. But a fresh generation has sprung up who knew not Joseph. Even if these juveniles had heard my name, or stumbled upon it in the

Law List, they could not be expected to adapt it to one whom they had never seen. Even the newly-enlisted and highly-respectable and respectful men who guard the portals of the different courts, and whose novelty is the only thing against them, are sometimes curious to know what right I have to enter the sacred fane; however, a very slight explanation satisfies them, and so well have they been brought up, that they then become almost deferential.

But when I get inside, all is changed, except the officials and the ushers, who greet me as an old friend, and my rejuveniscence is at once established—at least to my own thinking. It somewhat reminds me, though with a difference, of the doctor in a country district who used to take a walk daily in the churchyard, to pay his respects to his quondam patients.

But, to return to the subject of prolixity, as I have before reminded the reader, in a very short time the race, like that of the dodo, will be extinct, and not an individual will be found who can conscientiously sign himself 'One who knows.' We often find that many people prefer the minutiæ of history to its broader and far more important details; and I think that the serjeants have been important enough to justify the belief

that some inquiries may be made respecting them hereafter.

I am not presumptuous enough to suppose that my book will ever arrive at that region, so much coveted by authors, where posterity has always been said to dwell. It is a very shifting and advancing locality, for we must remember that we were posterity once, and what we are doing now, by way of prying into the past, will probably be done by our successors when they are in our predicament. But it is singular how speedily institutions and customs, when once totally abolished, are all but absolutely forgotten. How difficult it is to realise now that, within a very few years, a fair at Smithfield, in the very heart of London, was held annually for several days—where booths and shows, roundabouts and rabble terribly disturbed the peace of the neighbourhood; that turnpike gates were erected at every main outlet from the City, and were continued at perhaps a mile apart on every principal road throughout the country, impeding traffic and irritating the tempers of mounted or vehicular wayfarers; or that an officer in the Navy with a body of his men were empowered, under the name of a press-gang, to prowl about London and our seaports, kidnapping any seafaring man or any stroller they might fall in with,

carrying him on board a king's ship, and compelling him to fight for his country, whether he liked it or not; or that on the south bank of the Thames, as you passed down the river, you might see—as I myself have often seen—dangling from gibbets the bodies of executed criminals swaying backwards and forwards in the wind. In recalling these things to mind in the present more rational and sedate times we can only wonder that such nuisances and barbarisms were ever allowed to exist under a civilised government.

In a generation or two, the world in general will forget that there ever were such things as serjeants; but, when their history is sought by the enquiring few, I hope they will not be looked upon in the same light as those quasi institutions I have above referred to.

Now Serjeant Busfuz, not perhaps a very favourable specimen, will dive a long way down into futurity, and on his passage inquisitive people will want to know—by and what Mr. Dickens has chosen to state—what a 'serjeant' meant, and how he was distinguished from the other bipeds of his species. Serjeant Busfuz was an entity and had his prototype in fact, though of course very grossly—even savagely—caricatured, as I who was acquainted with it can testify. We should certainly object to go down to future ages in that

garb—although there may be some people even now, who think the character as drawn in 'Pickwick' is a fair sample taken at hap-hazard from the bulk. We know that antiquaries much more often delight in trivialities than in essentials, and that their zeal for discoveries sometimes increases in an inverse ratio to their chance of making one. Many take an interest in the sayings and doings of a criminal before he is executed: for instance, what he eats and drinks—what he talks about—how he sleeps—whether he keeps his courage up, and how often he sheds tears. Then, if he has made a last dying speech and confession, they read it with avidity. Formerly it seems to have been thought by condemned culprits that it was—to use a popular vulgarism—bad form to make their exit without going through this little ceremony, by way of showing their pluck and daring before the motley assemblage gathered together to witness their departure. Now the fashion seems dying out, perhaps from the paucity as well as the official character of the audience, who would not probably be much impressed by the display. I may perhaps urge this, by way of analogy, as an interesting attribute of our position, seeing that we too, as a body, are under sentence of a lingering death, and, when the *coup-de-grâce* comes to the last of us, he will leave no trace behind him—at

least in the flesh—of what we once were. This consideration leads me to hope that our waning prattle, from the limited time it can last, will meet with a friendly and sympathetic reception.

I now begin to feel that, although I may not have exhausted all I had to say about the Bench and the Bar, I may perhaps have exhausted the patience of my readers. The doubt I originally expressed comes over me as to whether it is safe to be always harping upon the same string. The only instance I know of success attending such an undertaking was that of Paganini, to whom I have often listened with wonder and delight. But no single effort of his was so prolonged as to induce his hearers to get tired of him. I venture to think that if he had taken three, or four hundred pages of music, and worked it off at score, there would have been some gaping and yawning before he had got to the end of his doughty enterprise. But the task of condensing is always more difficult than that of enlarging, and the taint of a single string would still have adhered to my book. Then I thought of its title, and deemed that it would have been a breach of faith to stroll from my professed design. As it is, I have spoken freely and openly of many of those whose names I have introduced, but I have *originated* no strictures on the character of any one of them; I

have only sought further to illustrate the attributes they were all known to possess, and which were, in fact, patent to all their associates and observers.

Exception may possibly be taken to my dealing almost exclusively with the dead, who proverbially 'can tell no tales,' by way of retaliatory *tu quoques*, nor can they defend themselves from the calumnies of the malicious; but I determined that my efforts should assume the tone of ancient rather than of modern history. I have always thought it an impertinence to discuss the conduct of living persons (especially of those in public positions) either in regard to imputed censure or lavish praise. There may no doubt be occasions when such a course may be specially called for; but I think they are entitled to immunity from criticism or remark so long as their duties are performed faithfully and well.

I have great personal regard for many members of the Bench and the Bar, but I would instinctively shrink from alluding, in the face of the public, to their merits, as much as I would to their kindly and venial foibles, should they possess any —and there are few of us who are without weakness of some kind. They would be as shocked at receiving extravagant eulogy, as I trust I should be incapable of offering it. As I have before

hinted, little trifling eccentricities, that in the estimate of a man's friends do not in the slightest degree interfere with their affectionate regard for him, would, were he told of them, be resented by him as a malicious calumny. The dead have no such delicate sensibilities. A little badinage, or what is vulgarly called chaff, does not affect them. Anyway, they must take their chance. But the characters of prominent men are public property. To be freely talked of when dead is the price they paid for their notoriety when living; but none the less do I think it a crime wilfully to do injustice to their memories. After all, I have thought it right to treat the living with respectful silence. Others, more competent than I am, will one of these days illustrate their characters at a time when it will be perfectly indifferent to them whether they are subjected to praise or blame.

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